

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 10-K

(Mark One)

Annual Report Pursuant to Section 13 or 15(d) of The Securities Exchange Act of 1934

For the fiscal year ended **December 31, 2021**

OR

Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the Transition Period from _____ to _____

Commission File No. 001-36868



SUNWORKS, INC.

(Exact name of registrant as specified in its charter)

DELAWARE

(State or other jurisdiction
of incorporation or organization)

01-0592299

(I.R.S. Employer
Identification No.)

1555 Freedom Boulevard

Provo, UT

(Address of principal executive office)

84604

(Zip Code)

Registrant's telephone number, including area code **(385) 497-6955**

Securities registered pursuant to Section 12(b) of the Act:

Common Stock, Par Value \$0.001

(Title of class)

SUNW

(Trading Symbol(s))

The Nasdaq Stock Market LLC

(Name of exchange on which registered)

Securities registered pursuant to Section 12(g) of the Act: NONE

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and, (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has filed the interactive data exhibits required to be filed during the past 12 months (or shorter applicable period). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the company has filed an attestation report regarding management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act by the registered public accountants that audited the company's financial statements. Yes No

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

The aggregate market value of the common stock held by non-affiliates as of June 30, 2021 was \$284.2 million.

The outstanding number of shares of common stock as of March 11, 2022 was 29,303,772.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive Proxy Statement for the 2022 Annual Meeting of Stockholders, to be filed with the Securities and Exchange Commission pursuant to Regulation 14A not later than 120 days after the end of the fiscal year covered by this Form 10-K, are incorporated by reference in Part III, Items 10-14 of this Form 10-K. Except for the portions of the Proxy Statement specifically incorporated by reference in this Form 10-K, the Proxy Statement shall not be deemed to be filed as part hereof

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Cautionary Note Regarding Forward-looking Statements

Statements in this Annual Report on Form 10-K that are not historical facts constitute forward-looking statements. Examples of forward-looking statements include statements relating to industry prospects, our future economic performance including anticipated revenues and expenditures, results of operations or financial position, and other financial items, our business plans and objectives, and may include certain assumptions that underlie forward-looking statements. Risks and uncertainties that may affect our future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements include, among other things, those listed under “Risk Factors” and elsewhere in this Annual Report on Form 10-K.

The following is a summary of the principal risk factors facing our business. This summary should be read in conjunction with the “Risk Factors” section and should not be relied upon as an exhaustive summary of the material risks facing our business. These risks include but are not limited to:

- our history of operating losses;
- our ability to raise additional capital to meet our financial commitments and objectives;
- our ability to compete in the solar power industry;
- our ability to sell solar power systems;
- our ability to arrange financing for our customers;
- government incentive programs related to solar energy;
- our ability to increase the size of our company and manage growth;
- our ability to acquire and integrate other businesses;
- disruptions to our business from protective tariffs on imported components, supply shortages and/or fluctuations in pricing;
- disruptions to our supply chain due to the impact of COVID-19 (Coronavirus);
- our ability or inability to attract and/or retain competent employees;
- relationships with employees, consultants, customers, and suppliers; and
- the concentration of our business in one industry in limited geographic areas.

In some cases, you can identify forward-looking statements by terminology such as “may,” “will,” “should,” “expects,” “intends,” “plans,” “anticipates,” “believes,” “estimates,” “predicts,” “potential” or “continue” or the negative of these terms or other comparable terminology.

These statements are subject to business and economic risk and reflect management's current expectations and involve subjects that are inherently uncertain and difficult to predict. Actual events or results may differ materially. Moreover, neither we nor any other person assumes responsibility for the accuracy or completeness of these statements. We are under no duty to update any of the forward-looking statements after the date of this Annual Report on Form 10-K to conform these statements to actual results.

PART I

Item 1. Business.

Business Introduction/Summary

References herein to "we," "us," "Sunworks," and "the Company" are to Sunworks, Inc. and its wholly-owned subsidiaries Sunworks United Inc. ("Sunworks United"), and its wholly-owned subsidiaries Solcius, LLC ("Solcius") and Commercial Solar Energy Inc. ("CSE").

We provide photovoltaic ("PV") and battery based power and storage systems for the residential and commercial markets. Commercial projects include commercial, agricultural, industrial and public works projects.

We were originally incorporated in Delaware on January 30, 2002 as MachineTalker, Inc. In July 2010, we changed our company name to Solar3D, Inc. On January 31, 2014, we acquired 100% of the stock of Solar United Network, Inc., a California corporation. On March 2, 2015, we acquired MD Energy. On December 1, 2015, we acquired Plan B through a merger of Plan B Enterprises, Inc. into our wholly owned subsidiary, Elite Solar Acquisition Sub., Inc. On March 1, 2016 we changed our name to Sunworks, Inc. with simultaneous Nasdaq stock symbol change from SLTD to SUNW.

On April 8, 2021, Sunworks, Inc., through its operating subsidiary Sunworks United (the "Buyer"), acquired all of the issued and outstanding membership interests (the "Acquisition") of Solcius, from Solcius Holdings, LLC ("Seller"). Located in Provo, Utah, Solcius is a full-service, residential solar systems provider. The transaction creates a national solar power provider with a presence now in 15 states, including California, Utah, Nevada, Arizona, New Mexico, Texas, Colorado, Minnesota, Wisconsin, Massachusetts, Rhode Island, New York, Pennsylvania, New Jersey and South Carolina. The Company believes the transaction enhances economies of scale, leading to better access to suppliers, vendors and financial partners, as well as marketing and customer acquisition opportunities.

The Acquisition was consummated on April 8, 2021 pursuant to a Membership Interest Purchase Agreement, dated as of April 8, 2021 (the "Purchase Agreement"), by and between Buyer and Seller. The purchase price for Solcius consisted of \$51.75 million in cash, subject to post-closing adjustments related to working capital, cash, indebtedness and transaction expenses.

Sunworks

Through our Sunworks operating subsidiaries, we design, arrange financing, integrate, install, and manage systems ranging in size from 2kW (kilowatt) for residential projects to multi-MW (megawatt) systems for larger commercial and public works projects. Commercial installations have included installations at office buildings, manufacturing plants, warehouses, service stations, churches, and agricultural facilities such as farms, wineries, and dairies. Public works installations have included school districts, local municipalities, federal facilities and higher education institutions. Commercial solar represented 23% of our 2021 revenue, compared to 74% of our revenue in 2020. Commercial Solar primarily operates primarily in California.

Solcius

Through our Solcius operating subsidiary, we design, arrange financing, integrate, install, and manage systems, primarily for residential homeowners. We sell residential solar systems through multiple channels, including our network of sales channel partners, and our growing direct sales channel strategy. We operate in several residential and commercial markets including California, Utah, Nevada, Arizona, New Mexico, Texas, Colorado, Minnesota, Wisconsin and South Carolina. We have direct sales or operations personnel in California, Nevada, Utah, Arizona, New Mexico, Texas, Colorado, South Carolina, Wisconsin and Minnesota.

Company Strategy

We intend to capitalize on the growth outlook for commercial and residential solar markets in North America. Our strategic objectives include the following, of which are subject to risks and uncertainties that are, and potentially will be, exacerbated by the COVID-19 pandemic and its related effects and any negative economic downturn:

- **Capitalize on industry growth.** Over the last decade, solar power has become the lowest cost new energy generation source as the industry matured and as technology has evolved. With solar, both residential and commercial customers can realize short pay back periods and can reduce their exposure to traditional energy sources. Environmental, Social and Governance (“ESG”) considerations are factored into customer buying patterns, as consumers want less reliance on grid participation and focus on renewable forms of energy generation. Additionally, the regulatory environment is generally positive, as the Biden administration continues to pursue incentives directed to clean energy generation. As a result, the solar industry is expected to grow at a rapid rate and become a significant source of new power generation, displacing some carbon-based alternatives.
- **Leverage Solcius acquisition to expand into new geographies.** Solcius has operations within 10 states and has plans to grow in new markets, where solar power is becoming more prevalent or is underserved. The Solcius acquisition has not only provided platforms of growth within the residential market, but also within our commercial business. It is our plan to leverage the Solcius footprint to expand our commercial operations over time.
- **Pursue acquisitions to build scale.** We intend to pursue acquisitions that develop scale, expand our geographic reach, increase our product offerings or improve our customer acquisition costs. We view scale as important in the solar industry, as larger competitors can leverage technology and supply chain economies of scale; reducing costs to consumers and improving the company’s cash flow generation.
- **Expand multi-channel sales network.** In our residential business in 2021, relationships with authorized dealers were the primary lead generation source. We intend to grow our authorized dealers and sales channel partner network in the future, by leveraging our IT platforms and history of providing best in class installation services. Additionally, we are developing internal methods of acquiring customers through in-house sales and tele-sales in markets where we do not have a significant presence today. We expect a sale to installation offering will allow us to expand our services and product offerings and reduce our customer acquisition costs over time. Our view is that both internal and external channels allow for an effective, scalable and cost-efficient growth.

Company Operations

Employees

As of December 31, 2021, we employed approximately 511 employees of which 495 were full-time employees with 16 of those employees on temporary layoff, medical, family or disability leave. We also utilize outside subcontractors to assist with installing commercial solar systems for our commercial customers. Our direct installation labor is a combination of employees and contract labor.

As of December 31, 2020, we employed approximately 122 full-time employees with 38 of those employees on temporary layoff, medical, family or disability leave plus two part-time employees.

Sales and Marketing

As of December 31, 2021, we had approximately 35 employees primarily focused on sales, sales support and marketing.

We are adding to our in-house direct residential sales force and marketing capabilities while we continue to partner with authorized dealers and select third-party sales originators. Reducing our residential customer acquisition costs and managing the customer experience throughout the process of sales and installation is part of our goal to minimize the fixed costs and financial risk of customer acquisition while improving the entire customer experience.

We have an advantage in the commercial solar market given our extensive contact list, resulting from our experience in the construction market, which provides access to customers. Through our network of vendors, participation in a variety of industry trade associations and independent sales consultants, we now have a growing list of repeat clients, as well as an active and loyal referral network.

As of December 31, 2020, we had approximately 16 employees primarily focused on sales, sales support and marketing.

Financing

To promote sales, we assist customers in obtaining financing through our network of lenders that offer leases, loans or Power Purchase Agreements (“PPAs”). A PPA is a contract between two parties, one which generates electricity and the other purchases the electricity.

Suppliers

We purchase solar panels, inverters, batteries and materials from multiple manufacturers both directly and through distributors. We intend to further coordinate purchases and optimize supply relationships to realize advantages of greater scale. Section 201 tariffs on solar modules were imposed beginning in 2018 and were extended through 2026. While these tariffs have not had a material negative impact on our business, we believe the tariffs were a contributing factor to smaller decreases to equipment costs than we would have otherwise experienced in 2021.

If one or more of our suppliers fail to meet our anticipated demand, ceases or reduces production due to its financial condition, acquisition by a competitor or otherwise, it may be difficult to quickly identify alternate suppliers or to qualify alternative products on commercially reasonable terms, and our ability to satisfy this demand may be adversely affected. We do not, however, rely on any single supplier and, we believe, we can obtain needed solar panels and materials from a variety of different suppliers. Accordingly, we believe that the loss of any single supplier would not materially affect our business.

We also utilize strategic partnerships with subcontractors for carport construction, and electrical installations, for racking and solar panel installations, as well as subcontractors for roofing, grading, landscaping, and construction for our larger commercial projects.

Installation

We are a licensed contractor in the markets we serve, and we are responsible for every customer installation. We manage the entire process from permitting through inspection to interconnection to the power grid, thereby making the system installation process simpler and as seamless as possible for our customers. Controlling every aspect of the installation process allows us to minimize costs, ensure quality and deliver high levels of customer satisfaction.

Even with controlling every aspect of the installation process, the ability to perform on a contract is subject to limitations. Jurisdictional approval processes are outside of our immediate control including, but not limited to, approval processes required by cities, counties, states or the federal government or one of their agencies. Other aspects outside of our direct control include approvals from various utility companies and weather conditions.

After-Sales Support

We offer continuing operational and maintenance services for our installed residential and commercial PV systems by providing extended factory equipment technical support and acting as a service liaison using our proprietary knowledge, technology, and solar electric energy and battery system qualified engineering and technical staff. We do this through a Limited Workmanship Warranty and Operations and Maintenance Program, which among other things provides a service and technical support line to our customers. We generally respond to our job site related issues within 24 hours. We strive to offer assistance for residential installations as long as required to maintain customer satisfaction. For commercial customers we offer separate operation, maintenance and monitoring contracts. These operation, maintenance and monitoring contracts generally have terms ranging from 5 to 25 years.

Facilities

We maintain sales and installation offices in Roseville, Sacramento, Tulare, Tustin and Riverside, California. We also maintain sales and installation offices in Provo, Utah; Phoenix, Arizona; Centennial, Colorado; El Paso and McAllen, Texas; Albuquerque and Roswell, New Mexico; Bloomington, Minnesota; Columbia, South Carolina; and Sturtevant, Wisconsin. We lease all of our offices and facilities.

Customers

Approximately 77% of our 2021 revenue came from residential installations while residential revenue was 26% of total revenue in 2020. The increase in residential revenue as a percentage of total revenue is the result of the Solcius Acquisition in April 2021. Approximately 23% of our total revenue in 2021 came from commercial installations, down from 74% in 2020.

Our residential operations address the needs of property owners by installing systems typically smaller than 20kW. We facilitate purchase or lease financing and offer multiple product options to fit the specific needs of each customer.

We install systems for the commercial market and for public works projects. We define small commercial and public works projects as the installation of systems under 100kW, whereas large projects involve the installation of systems greater than 100kW. Solar projects have received limited financing from traditional lending sources, but we are encouraged by municipal PACE programs in California which have drawn funding sources such as Ygrene Energy Fund into the financing of energy projects. Public works projects are frequently financed through various PPA arrangements, often in conjunction with SPURR (School Project for Utility Rate Reduction) programs, a Joint Powers Authority in California. Cycle times vary from twenty weeks to more than a year, depending on customer specifications, supply chain, permitting and engineering lead times. Agricultural system sizes vary significantly within this sector and can range from 10kW to multiple megawatts. Agricultural loans to farmers and tax-oriented leases are the primary funding sources within the industry. Similar to commercial installations, cycle times for agricultural projects may commonly range from a few months to more than three years depending upon the authority having jurisdiction, the existing utility infrastructure and the various approvals required.

Competitors

In the solar installation market, we compete with companies that offer products similar to ours. Some of these companies have greater financial resources, operational experience, and technical capabilities than we do. When bidding for solar installation projects, however, our current experience suggests that there is no clear dominant or preferred competitor in the markets in which we compete. We do not believe that any competitor has more than 10% of the market across all the areas in which we operate. We compete with other solar installers on pricing, service, warranty, and the ability to arrange financing. On a global scale, we also compete, on a cost basis, with traditional utilities that supply electricity to our potential customers and with companies that are not regulated like traditional utilities but that have access to the traditional utility electricity transmission and distribution infrastructure pursuant to state and local pro-competitive and consumer choice policies. Our advantage over traditional utilities is that we offer customers the opportunity to create their own electricity and reduce dependency from the traditional electrical grid.

Seasonality

Our revenue is impacted by seasonal weather patterns. In addition, some customers prefer to complete projects by the end of a calendar year to realize the benefits of available subsidy programs prior to year-end.

Technology and Intellectual Property

Generally, the solar installation business is not dependent on intellectual property. Within our residential business, we utilize proprietary software, which enables our sales channel partners to efficiently manage the sales process and allows our operations team to manage thousands of installations annually.

Government Regulation and Incentives

Government Regulation

We are not regulated as a public utility within the United States under applicable national, state or other local regulatory regimes where we conduct business.

To operate our systems, we obtain interconnection permission from the applicable local primary electric utility. Depending on the size of the solar energy system and local law requirements, interconnection permission is provided by the local utility to us or our customer. In almost all cases, interconnection permissions are issued on the basis of a standard process that has been pre-approved by the local public utility commission or other regulatory body with jurisdiction over net energy metering procedures. As such, no additional regulatory approvals are required once interconnection permission is given.

Our operations are subject to stringent and complex federal, state and local laws, including regulations governing the occupational health and safety of our employees and wage regulations. For example, we are subject to the requirements of the federal and California Occupational Safety and Health Act, as amended (“OSHA”), the U.S. Department of Transportation (“DOT”), and comparable state laws that protect and regulate employee health and safety.

Government Incentives

Federal, state and local government bodies provide incentives to owners, end users, distributors, system integrators and manufacturers of solar energy systems to promote solar energy in the form of rebates, tax credits and other financial incentives such as system performance payments, payments for renewable energy credits associated with renewable energy generation and exclusion of solar energy systems from property tax assessments. These incentives enable us to lower the price we charge customers to own or lease our solar energy systems, helping to catalyze customer acceptance of solar energy as an alternative to utility-provided power.

The federal investment tax credit (“ITC”) is currently 26% under Section 48(a) of the Internal Revenue Code, for the installation of certain solar power facilities until December 31, 2022, after which the ITC will decrease to 22% in 2023 and 0% in 2024 for residential installations and 10% for commercial credit thereafter. Congress may extend or otherwise alter the Commercial ITC, as well as the depreciation benefits for solar, via legislation in 2022.

For commercial projects the economics of purchasing a solar energy system are also improved by eligibility for accelerated depreciation, also known as the modified accelerated cost recovery system (“MACRS”) depreciation, which allows for the depreciation of equipment according to an accelerated schedule set forth by the Internal Revenue Service. The acceleration of depreciation creates a valuable tax benefit that reduces the overall cost of the solar energy system and increases the return on investment.

Approximately 50% of U.S. states offer a personal or corporate investment or production tax credit for solar energy that is additive to the ITC. Further, these states, and many local jurisdictions, have established property tax incentives for renewable energy systems that include exemptions, exclusions, abatements, and credits. Many state governments, traditional utilities, municipal utilities and co-operative utilities offer a rebate or other cash incentive for the installation and operation of a solar energy system or energy efficiency measures. Capital costs or “up-front” rebates provide funds to solar customers based on the cost, size or expected production of a customer’s solar energy system. Performance-based incentives provide cash payments to a system owner based on the energy generated by their solar energy system during a pre-determined period, and they are paid over that time period. Depending on the cost of the system and other site-specific variables, tax incentives can typically cover 30-40% of the cost of a commercial or residential solar system.

Many states also have adopted procurement requirements for renewable energy production that requires regulated utilities to procure a specified percentage of total electricity delivered to customers in the state from eligible renewable energy sources, such as solar energy systems, by a specified date.

Corporate Information

Our principal executive offices are located at 1555 Freedom Blvd, Provo, Utah 84604 and our telephone number is (385) 497-6955. Our web site address is www.sunworksusa.com. Information contained in or accessible through our website does not constitute part of this Annual Report on Form 10-K.

Available Information

We file annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission, referred to herein as the SEC. Our SEC filings, including our Annual Report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and any amendments to those reports filed or furnished pursuant to Section 13(a) of the Exchange Act are available to the public free of charge over the Internet at our website at <http://www.sunworksusa.com> or at the SEC’s web site at <http://www.sec.gov>. Our SEC filings will be available on our website as soon as reasonably practical after we have electronically filed or furnished them to the SEC. Information contained on our website is not incorporated by reference into this 10-K. You can view our Code of Conduct and Ethics and the charters for each of our committees of our Board of Directors free of charge on the investor relations section of our website under corporate governance.

Item 1A. Risk Factors.

Our business and operations are subject to a number of significant risks and uncertainties as described below. However, the risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties that we are unaware of, or that we may currently deem immaterial, may become important factors that could harm our business, financial condition, or results of operations. If any of the following risks actually occur, our business, financial condition or results of operations could suffer materially.

Risks Related to Our Financial Position and Capital Requirements

We have incurred significant losses since inception.

We had an accumulated deficit of \$115,260,000 and \$88,635,000 as of December 31, 2021 and December 31, 2020, respectively. We incurred annual operating losses since our inception. We anticipate becoming profitable as we increase our installation revenue and reduce our costs as a percentage of revenue. However, there can be no assurances that these actions will result in sustained profitability. We are subject to all the risks incidental to the sales, development, and costs of construction of new solar energy revenues, and we may encounter unforeseen expenses, difficulties, complications, delays and other unknown factors that may adversely affect our business.

We may require substantial additional funding which may not be available to us on acceptable terms, or at all. If we fail to raise the necessary additional capital, we may be unable to achieve growth of our operations.

Our operations have consumed substantial amounts of cash since inception. In order to carry out our business plan and implement our strategy, we anticipate that we will need to obtain additional financing from time to time and may choose to raise additional funds through strategic collaborations, public or private equity or debt financing, bank lines of credit, asset sales, government grants, or other arrangements. We cannot be sure that any additional funding, if needed, will be available on terms favorable to us or at all. Furthermore, any additional equity or equity-related financing may be dilutive to our shareholders, and debt or equity financing, if available, may subject us to restrictive covenants and significant interest costs.

Our inability to raise capital when needed could harm our ability to grow our operations substantially and could cause our stock price to decline.

Risks Related to Our Business and Industry

Our results of operations have been and will continue to be adversely impacted by the COVID-19 Pandemic, and the duration and extent to which it will impact our results of operations remains uncertain.

A significant outbreak of epidemic, pandemic, or contagious diseases in the human population, such as the current COVID-19 pandemic, could result in a widespread health crisis that could adversely affect the broader economies, financial and capital markets, commodity and energy prices, and overall demand environment for our products. A global health crisis could affect, and has affected, our workforce, customers and vendors, as well as economies and financial markets globally, potentially leading to an economic downturn, which could decrease spending, adversely affecting the demand for our products.

In response to the COVID-19 pandemic, many state, local, and foreign governments have put in place, and others in the future may put in place, travel restrictions, quarantines, “stay at home” orders and guidelines, and similar government orders and restrictions, in an attempt to control the spread of the disease. Such restrictions or orders have resulted in, and will continue to result in, business closures, work stoppages, slowdowns and delays, among other effects that could negatively impact our operations, as well as the operations of our customers and business partners. Such results have had and will continue to have a material adverse effect on our business, operations, financial condition, results of operations, and cash flows.

Although we have continued to operate consistent with federal guidelines and state and local orders, the extent to which the COVID-19 pandemic impacts our business, operations, financial results and financial condition will depend on numerous evolving factors which are uncertain and cannot be predicted, including:

- the duration and scope of the pandemic and associated disruptions;
- a general slowdown in our industry;
- governmental, business and individuals’ actions taken in response to the pandemic;
- the effect on our customers and our customers’ demand for our products and installations;
- the effect on our suppliers and disruptions to the global supply chain;
- our ability to sell and provide our products and provide installations, including disruptions as a result of travel restrictions and people working from home;
- the ability of our customers to pay for our products;
- delays in our projects due to closures of jobsites or cancellation of jobs; and
- any closures of our and our suppliers’ and customers’ facilities.

We continue to closely monitor the COVID-19 pandemic, including its resurgence in key markets as new variants of the virus continue to emerge. Due to the COVID-19 pandemic, our organization continues to operate both in person and virtually across the United States as deemed necessary by management, which entails the need for us to continue to support remote workforces at greater scale than we have before COVID-19.

We will continue promoting the health and safety of our employees and contractors. In an effort to protect our employees and contractors, we continue to comply with all health and safety regulations, including adopting social distancing policies at all our locations, working from home, and complying with domestic travel restrictions as necessary. We will continue to implement appropriate safety measures, including requiring employees to be fully vaccinated to access our workplace facilities pursuant to federal, state, and local guidelines, as well as taking into consideration COVID-19 case trends and related measures in our locations. We may take further actions as government authorities require or recommend or as we determine to be in the best interests of our employees, customers, partners, and suppliers.

A material reduction in the retail price of traditional utility generated electricity or electricity from other sources could harm our business, financial condition, results of operations and prospects.

We believe that a significant number of our customers decide to buy solar energy because they want to pay less for electricity than what is offered by the traditional utilities. However, distributed residential solar energy has yet to achieve broad market adoption as evidenced by the fact that distributed solar has penetrated less than 5% of its total addressable market in the U.S. residential sector.

The customer's decision to choose solar energy may also be affected by the cost of other renewable energy sources. Decreases in the retail prices of electricity from the traditional utilities or from other renewable energy sources would harm our ability to offer competitive pricing and could harm our business. The price of electricity from traditional utilities could decrease as a result of:

- construction of a significant number of new power generation plants, including plants utilizing natural gas, nuclear, coal, renewable energy or other generation technologies;
- relief of transmission constraints that enable local centers to generate energy less expensively;
- reductions in the price of natural gas;
- utility rate adjustment and customer class cost reallocation;
- energy conservation technologies and public initiatives to reduce electricity consumption;
- development of new or lower-cost energy storage technologies that have the ability to reduce a customer's average cost of electricity by shifting load to off-peak times; or
- development of new energy generation technologies that provide less expensive energy.

A reduction in utility electricity prices would make the purchase or the lease of our solar energy systems less economically attractive. If the retail price of energy available from traditional utilities were to decrease due to any of these reasons, or other reasons, we would be at a competitive disadvantage, we may be unable to attract new customers and our growth would be limited.

Existing electric utility industry regulations, and changes to regulations, may present technical, regulatory and economic barriers to the purchase and use of solar energy systems that may significantly reduce demand for our solar energy systems.

Federal, state and local government regulations and policies concerning the electric utility industry, and internal policies and regulations promulgated by electric utilities, heavily influence the market for electricity generation products and services. These regulations and policies often relate to electricity pricing and the interconnection of customer-owned electricity generation. In the United States, governments and utilities continuously modify these regulations and policies. These regulations and policies could deter customers from purchasing renewable energy, including solar energy systems. This could result in a significant reduction in the potential demand for our solar energy systems. For example, utilities commonly charge fees to larger, industrial customers for disconnecting from the electric grid or for having the capacity to use power from the electric grid for back-up purposes. These fees could increase our customers' cost to use our systems and make them less desirable, thereby harming our business, prospects, financial condition and results of operations. In addition, depending on the region, electricity generated by solar energy systems competes most effectively with expensive peak-hour electricity from the electric grid, rather than the less expensive average price of electricity. Modifications to the utilities' peak hour pricing policies or rate design, such as to a flat rate, would require us to lower the price of our solar energy systems to compete with the price of electricity from the electric grid.

In addition, any changes to government or internal utility regulations and policies that favor electric utilities could reduce our competitiveness and cause a significant reduction in demand for our products and services. For example, certain jurisdictions have proposed assessing fees on customers purchasing energy from solar energy systems or imposing a new charge that would disproportionately impact solar energy system customers who utilize net energy metering, either of which would increase the cost of energy to those customers and could reduce demand for our solar energy systems. It is possible charges could be imposed on not just future customers but our existing customers, causing a potentially significant consumer relations problem and harming our reputation and business. Due to the amount of our business in California, any such changes in these markets would be particularly harmful to our business, results of operations, and future growth.

Our growth strategy depends on the widespread adoption of solar power technology.

The market for solar power products is emerging and rapidly evolving, and its future success is uncertain. If solar power technology proves unsuitable for widespread commercial deployment or if demand for solar power products fails to develop sufficiently, we would be unable to generate enough revenues to achieve and sustain profitability and positive cash flow. The factors influencing the widespread adoption of solar power technology include but are not limited to:

- cost-effectiveness of solar power technologies as compared with conventional and non-solar alternative energy technologies;
- performance and reliability of solar power products as compared with conventional and non-solar alternative energy products;
- fluctuations in economic and market conditions which impact the viability of conventional and non-solar alternative energy sources, such as increases or decreases in the prices of oil and other fossil fuels;
- availability and economics of battery storage and co-generation technology;
- continued deregulation of the electric power industry and broader energy industry; and
- availability of governmental subsidies and incentives.

Our business currently benefits from the availability of rebates, tax credits and other financial incentives. The expiration, elimination or reduction of these rebates, credits and incentives would adversely impact our business.

U.S. federal, state and local government bodies provide incentives to end users, distributors, system integrators and manufacturers of solar energy systems to promote solar electricity in the form of rebates, tax credits and other financial incentives such as system performance payments and payments for renewable energy credits associated with renewable energy generation. These governmental rebates, tax credits and other financial incentives enhance the return on investment for our customers and incentivize them to purchase solar systems. These incentives enable us to lower the price we charge customers for energy and for our solar energy systems. However, these incentives may expire on a particular date, end when the allocated funding is exhausted, or be reduced or terminated as solar energy adoption rates increase. These reductions or terminations often occur without warning.

Reductions in, or eliminations or expirations of, governmental incentives could adversely impact our results of operations and our ability to compete in our industry, causing us to increase the prices of our solar energy systems, and reducing the size of our addressable market. In addition, this would adversely impact our ability to attract investment partners and to form new financing funds and our ability to offer attractive financing to prospective customers.

Net energy metering and related policies to offer competitive pricing to our customers in our current markets, and changes to net energy metering policies may significantly reduce demand for electricity from our solar energy systems.

Each of the states where we currently serve customers has adopted a net energy metering policy. Net energy metering typically allows our customers to interconnect their on-site solar energy systems to the utility grid and offset their utility electricity purchases by receiving a bill credit at the utility's retail rate for energy generated by their solar energy system that is exported to the grid in excess of the electric load used by the customer. At the end of the billing period, the customer simply pays for the net energy used or receives a credit at the retail rate if more energy is produced than consumed. Utilities operating in states without a net energy metering policy may receive solar electricity that is exported to the grid when there is no simultaneous energy demand by the customer without providing retail compensation to the customer for this generation.

Our ability to sell solar energy systems and the electricity they generate may be adversely impacted by the failure of states to expand existing limits on the amount of net energy metering in states that have implemented net metering. The failure of states to adopt a net energy metering policy where it currently is not in place, the imposition of new charges that only or disproportionately impact customers that utilize net energy metering may also negatively impact our operations. In addition, reductions in the amount or value of credit that customers receive through net energy metering could negatively impact the demand for our services. Our ability to sell solar energy systems and the electricity they generate also may be adversely impacted by the unavailability of expedited or simplified interconnection for grid-tied solar energy systems or any limitation on the number of customer interconnections or amount of solar energy that utilities are required to allow in their service territory or some part of the grid. If such charges are imposed, the cost savings associated with switching to solar energy may be significantly reduced and our ability to attract future customers and compete with traditional utility providers could be impacted.

Limits on net energy metering, interconnection of solar energy systems and other operational policies in key markets could limit the number of solar energy systems installed in those markets. For example, the California Public Utilities Commission ("CPUC") is revisiting its net metering policy, under NEM 3.0, releasing its proposed decision in December 2021, to significantly reduce the compensation for customer owned generation and imposing fixed fees for solar customers. If adopted, the proposed decision would have an adverse effect on our business. On February 3, 2021, the CPUC said it has paused the proceeding "until further notice" to "consider revisions to the proposed decision." In addition, California Governor Gavin Newsom said at a press conference there is "work to do" on the proposal. However, there is no guarantee that substantial modifications to the proposal will occur before enactment. In 2021, we generated 42% of our revenue in California.

Our business depends in part on the regulatory treatment of third-party owned solar energy systems.

Our leases and any power purchase agreements are third-party ownership arrangements. Sales of electricity by third parties face regulatory challenges in some states and jurisdictions. Other challenges pertain to whether third-party owned systems qualify for the same levels of rebates or other non-tax incentives available for customer-owned solar energy systems, whether third-party owned systems are eligible at all for these incentives, and whether third-party owned systems are eligible for net energy metering and the associated significant cost savings. Reductions in, or eliminations of, this treatment of these third-party arrangements could reduce demand for our systems.

Our ability to provide solar energy systems to customers on an economically viable basis depends on our ability to help customers arrange financing for such systems.

Our solar energy systems have been eligible for Federal ITCs or U.S. Treasury grants, as well as depreciation benefits. We have relied on, and will continue to rely on, financing structures that monetize a substantial portion of those benefits and provide financing for our solar energy systems. If, for any reason, our customers were unable to continue to monetize those benefits through these arrangements, we may be unable to provide and maintain solar energy systems for new customers on an economically viable basis.

The availability of this tax-advantaged financing depends upon many factors, including, but not limited to:

- the state of financial and credit markets;
- changes in the legal or tax risks associated with these financings; and
- non-renewal of these incentives or decreases in the associated benefits.

U.S. Treasury grants are no longer available for new solar energy systems. Changes in existing law and interpretations by the Internal Revenue Service and the courts could reduce the willingness of funding sources to provide funds to customers of these solar energy systems. We cannot assure you that this type of financing will be available to our customers. If, for any reason, we are unable to find financing for solar energy systems, we may no longer be able to provide solar energy systems to new customers on an economically viable basis. This would have a negative impact on our business, financial condition, and results of operations.

Our inability to arrange financing could hurt our future business.

We also compete, on a cost basis, with traditional utilities that supply electricity to our potential customers and with companies that are not regulated like traditional utilities but that have access to the traditional utility electricity transmission and distribution infrastructure pursuant to state and local pro-competitive and consumer choice policies. Our advantage over traditional utilities is that we offer customers the opportunity to create their own electricity and detach from the traditional electrical grid. To offer customers this opportunity, we often have to arrange financing for our customers as solar projects have received limited financing from traditional lending sources. Our objective is to arrange the most flexible terms that meet the needs of the customer. Although we do not provide financing ourselves, we have relationships to arrange financing with numerous private and public sources, including PACE (Property Assessed Clean Energy) Programs, which are programs that involve both municipal governments and private financing companies that allows property owners to receive upfront funding for renewable energy projects, and agricultural financing offered by a network of lending institutions. Our inability to arrange financing through these or other sources could adversely affect our business and results of operations.

If we cannot compete successfully against other solar and energy companies, we may not be successful in developing our operations and our business may suffer.

The solar and energy industries are characterized by intense competition and technological advances, both in the United States and internationally. We compete with solar companies with business models that are similar to ours. In addition, we compete with solar companies in the downstream value chain of solar energy. For example, we face competition from purely finance driven organizations that acquire customers and then subcontract out the installation of solar energy systems, from installation businesses that seek financing from external parties, from large construction companies and utilities, and increasingly from sophisticated electrical and roofing companies. Some of these competitors specialize in the residential solar energy market, and some may provide energy at lower costs than we do. Further, some of our competitors are integrating vertically in order to ensure supply and to control costs. Many of our competitors also have significant brand name recognition and have extensive knowledge of our target markets.

If we are unable to compete in the market, it will have a negative impact on our business, financial condition, and results of operations.

Our business is concentrated in certain markets, putting us at risk of region-specific disruptions.

As of December 31, 2020, a vast majority of our total installations were in California and Nevada. With the acquisition of Solcius in April 2021, we have reduced that concentration in California by having a presence in several more states. We expect our near-term future growth to occur outside of California and to further expand our customer base and operational infrastructure. However, our business and results of operations are now particularly susceptible to adverse regional economic, regulatory, political, weather and other conditions in the greater southwest, Texas and north central regions of the United States which markets may become similarly concentrated.

Our customer acquisition function is concentrated with certain third-party solar sales channel partners and our growth depends on maintaining and expanding these relationships.

A key component of our growth strategy is to develop or expand our relationships with third parties. For example, we are investing resources in establishing strategic relationships with dealers and sales channel partners, to generate new customers. Developing new relationships may not occur as quickly as planned or may not generate new customers as planned. A significant portion of our business depends on attracting and retaining new and existing solar dealers and sales channel partners. For example, we diversified our market and product concentration following the acquisition of Solcius in April 2021. Solcius utilizes a combination of authorized dealers and a direct sales strategy to generate new customers. Since the acquisition, Solcius has had three authorized dealers that combined accounted for more than 80% of Solcius' revenue for 2021. Negotiating relationships with our solar partners, investing in due diligence efforts with potential solar partners, training such third parties and contractors, and monitoring them for compliance with our standards require significant time and resources and may present greater risks and challenges than expanding a direct sales or installation team. If we are unsuccessful in establishing or maintaining our relationships with these third parties, our ability to grow our business and address our market opportunities could be impaired. Even if we are able to establish and maintain these relationships, we may not be able to execute on our goal of leveraging these relationships to meaningfully expand our business, brand recognition and customer base. This would limit our growth and our opportunities to generate significant additional revenue or cash flows.

If we are unable to retain and recruit qualified technicians and advisors, or if our board of directors, key executives, key employees or consultants discontinue their employment or consulting relationship with us or fail to properly integrate into our business and operations it may delay our development efforts or otherwise adversely affect our business.

We may not be able to attract or retain qualified management or technical personnel in the future due to the intense competition for qualified personnel among solar, energy, construction and other businesses. Our industry has experienced a high rate of turnover of management personnel in recent years. If we are not able to attract, retain, motivate and integrate necessary personnel to accomplish our business objectives, we may experience constraints that will significantly impede the successful development of any product candidates, our ability to raise additional capital, and our ability to implement our overall business strategy.

We are highly dependent on members of our management and technical staff. Our success also depends on our ability to continue to attract, retain and motivate highly skilled junior, mid-level, and senior managers as well as junior, mid-level, and senior technical personnel. The loss of any of our executive officers, key employees, or consultants and our inability to find suitable replacements could potentially harm our business, financial condition, and prospects. We may be unable to attract and retain personnel on acceptable terms given the competition among solar and energy companies. Certain of our current officers, directors, or consultants hereafter appointed may from time to time serve as officers, directors, advisors, or consultants of other solar and energy companies. We do not maintain “key man” insurance policies on any of our officers or employees. Other than certain members of our senior management team, all our employees are employed “at will” and, therefore, each employee may leave our employment and join a competitor at any time.

We plan to continue to grant stock options, restricted stock unit grants, performance grants or other forms of equity awards in the future as a method of attracting and retaining employees, motivating performance, and aligning the interests of employees with those of our shareholders. If we are unable to implement and maintain equity compensation arrangements that provide sufficient incentives, we may be unable to retain our existing employees and attract additional qualified candidates. If we are unable to retain our existing employees and attract additional qualified candidates, our business and results of operations could be adversely affected. Currently the vast majority of the exercise prices of all outstanding stock options are greater than the current stock price.

We may not realize the anticipated benefits of past or future investments, strategic transactions, or acquisitions, and integration of these acquisitions may disrupt our business and management.

We have in the past and may in the future, acquire companies, or enter into joint ventures or other strategic transactions. For example, on April 8, 2021, we acquired all the membership interests of Solcius, for cash consideration of \$51.8 million, a full service, residential solar system provider which provides proposal generation, engineering, permitting, installation services and financial solutions to customers across the country, with the largest markets being Texas, California, New Mexico and Colorado.

We may not realize the anticipated benefits of past or future investments, strategic transactions, or acquisitions, and these transactions involve numerous risks that are not within our control. These risks include the following, among others:

- difficulty in assimilating the operations, systems, and personnel of the acquired company;
- difficulty in effectively integrating the acquired technologies or products with our current products and technologies;
- difficulty in maintaining controls, procedures and policies during the transition and integration;
- disruption of our ongoing business and distraction of our management and employees from other opportunities and challenges due to integration issues;
- difficulty integrating the acquired company's accounting, management information and other administrative systems;
- inability to retain key technical and managerial personnel of the acquired business;
- inability to retain key customers, vendors and other business partners of the acquired business;
- inability to achieve the financial and strategic goals for the acquired and combined businesses;
- incurring acquisition-related costs or amortization costs for acquired intangible assets that could impact our results of operations;
- significant post-acquisition investments which may lower the actual benefits realized through the acquisition;
- potential failure of the due diligence processes to identify significant issues with product quality, legal, and financial liabilities, among other things; and
- potential inability to assert that internal controls over financial reporting are effective.

Our failure to address these risks, or other problems encountered in connection with our past or future investments, strategic transactions, or acquisitions, could cause us to fail to realize the anticipated benefits of these acquisitions or investments, cause us to incur unanticipated liabilities, and harm our business generally. Future acquisitions could also result in dilutive issuances of our equity securities, the incurrence of debt, contingent liabilities, amortization expenses, incremental expenses or the write-off of goodwill, any of which could harm our financial condition or results of operations, and the trading price of our common stock could decline.

Mergers and acquisitions are inherently risky, may not produce the anticipated benefits and could adversely affect our business, financial condition or results of operations.

A portion of our total assets consists of goodwill and intangibles, which are subject to a periodic impairment analysis, and a significant impairment determination in any future period could have an adverse effect on our statement of operations even without a significant loss of revenue or increase in cash expenses attributable to such period.

At December 31, 2021 we wrote off \$5.5 million of goodwill remaining from the earlier acquisitions of Solar United Network, MD Energy and Plan B. We have remaining goodwill of approximately \$32.2 million associated with the acquisition of Solcius LLC together with intangible assets totaling \$7.9 million. We will be required to continue to evaluate this goodwill and intangibles for impairment based on the fair value of the operating business units to which this goodwill and intangible assets relate, at least once a year. These estimated fair values could change if we are unable to achieve operating results at the levels that have been forecasted, the market valuation of that business unit decreases based on transactions involving similar companies, or there is a permanent, negative change in the market demand for the services offered by the business unit. These changes could result in further impairment of the existing goodwill and intangible balances and that could require a material non-cash charge to our results of operations.

In the year ended December 31, 2021, we had a goodwill impairment charge of \$5.5 million. In the year ended December 31, 2020, we had a goodwill impairment charge of \$4.0 million.

We may be subject to claims arising from the operations of our various businesses for periods prior to the dates we acquired them.

We may be subject to claims or liabilities arising from the ownership or operation of acquired businesses for the periods prior to our acquisition of them, including environmental, employee-related, and other liabilities and claims not covered by insurance. These claims or liabilities could be significant. Our ability to seek indemnification from the former owners of our acquired businesses for these claims or liabilities may be limited by various factors, including the specific time, monetary or other limitations contained in the respective acquisition agreements and the financial ability of the former owners to satisfy our indemnification claims. In addition, insurance companies may be unwilling to cover claims that have arisen from acquired businesses or locations, or claims may exceed the coverage limits that our acquired businesses had in effect prior to the date of acquisition. If we are unable to successfully obtain insurance coverage of third-party claims or enforce our indemnification rights against the former owners, or if the former owners are unable to satisfy their obligations for any reason, including because of their current financial position, we could be held liable for the costs or obligations associated with such claims or liabilities, which could adversely affect our financial condition and results of operations.

With respect to providing electricity on a price-competitive basis, solar systems face competition from traditional regulated electric utilities, from less-regulated third party energy service providers and from new renewable energy companies.

The solar energy and renewable energy industries are both highly competitive and continually evolving as participants strive to distinguish themselves within their markets and compete with large traditional utilities. We believe that one of our primary competitors (excluding other engineering, procure and construction businesses) are the traditional utilities that supply electricity to our potential customers. Traditional utilities generally have substantially greater financial, technical, operational, and other resources than we do. As a result, these competitors may be able to devote more resources to the research, development, promotion, and sale of their products or respond more quickly to evolving industry standards and changes in market conditions than we can. Traditional utilities could also offer other value-added products or services that could help them to compete with us even if the cost of electricity they offer is higher than ours. In addition, a majority of utilities' sources of electricity is non-solar, which may allow utilities to sell electricity more cheaply than electricity generated by our solar energy systems.

We also compete with companies that are not regulated like traditional utilities but that have access to the traditional utility electricity transmission and distribution infrastructure pursuant to state and local pro-competitive and consumer choice policies. These energy service companies are able to offer customers electricity supply-only solutions that are competitive with our solar energy system options on both price and usage of renewable energy technology while avoiding the long-term agreements and physical installations that our current business model requires. This may limit our ability to attract new customers; particularly those who wish to avoid long-term contracts or have an aesthetic or other objection to putting solar panels on their roofs.

As the solar industry grows and evolves, we will also face new competitors who are not currently in the market. Low technological barriers to entry characterize our industry and well-capitalized companies could choose to enter the market and compete with us. Our failure to adapt to changing market conditions and to compete successfully with existing or new competitors will limit our growth and will have a negative impact on our business and prospects.

Developments in alternative technologies or improvements in distributed solar energy generation may materially adversely affect demand for our offerings.

Significant developments in alternative technologies, such as advances in other forms of distributed solar power generation, storage solutions such as batteries, the widespread use or adoption of fuel cells for residential or commercial properties or improvements in other forms of centralized power production may materially and adversely affect our business and prospects in ways we do not currently anticipate. Any failure by us to adopt new or enhanced technologies or processes, or to react to changes in existing technologies, could materially delay deployment of our solar energy systems, which could result in product obsolescence, the loss of competitiveness of our systems, decreased revenue and a loss of market share to competitors.

Climate change may have long-term impacts on our business, our industry, and the global economy.

Climate change poses a systemic threat to the global economy and will continue to do so until our society transitions to renewable energy and decarbonizes. While our core business model seeks to accelerate this transition to renewable energy, there are inherent climate-related risks to our business operations. Warming temperatures throughout the United States, and in California, our biggest market, in particular, have contributed to extreme weather, intense drought, and increased wildfire risks. These events have the potential to disrupt our business, our third-party suppliers, and our customers, and may cause us to incur additional operational costs. For instance, natural disasters and extreme weather events associated with climate change can impact our operations by delaying the installation of our systems, leading to increased expenses and decreased revenue and cash flows in the period. They can also cause a decrease in the output from our systems due to smoke or haze. Additionally, if weather patterns significantly shift due to climate change, it may be harder to predict the average annual amount of sunlight striking each location where our solar energy systems are installed. This could make our solar service offerings less economical overall or make individual systems less economical.

We depend on a limited number of suppliers, for certain critical raw materials, components and finished products, including our modules. Any supply interruption or delay could adversely affect our business, prevent us from delivering products to our customers within required timeframes, and could in turn result in sales and installation delays, cancellations, penalty payments, or loss of market share.

Our supply chain is subject to natural disasters and other events beyond our control, such as raw material, component, and labor shortages, global and regional shipping and logistics constraints, global conflicts or wars, work stoppages, epidemics or pandemics, earthquakes, floods, fires, volcanic eruptions, power outages, or other natural disasters, and the physical effects of climate change, including changes in weather patterns (including floods, fires, tsunamis, drought, and rainfall levels), water availability, storm patterns and intensities, and temperature levels. Human rights concerns, including forced labor and human trafficking, in foreign countries and associated governmental responses have the potential to disrupt our supply chain and our operations could be adversely impacted. For example, the U.S. Department of Homeland Security issued a withhold release order on June 24, 2021 applicable to silica-based products made by a major producer of polysilicon used by manufacturers of solar panels in China's Xinjiang Uygur autonomous region, over allegations of widespread, state-backed forced labor in the region. Although we do not believe that raw materials used in the products we sell are sourced from this or other regions with forced labor concerns, any delays or other supply chain disruption resulting from these concerns, associated governmental responses, or a desire to source products, components or materials from other manufacturers or regions could result in shipping, sales and installation delays, cancellations, penalty payments, or loss of revenue and market share, any of which could have a material adverse effect on our business, results of operations, cash flows, and financial condition.

Due to the limited number of suppliers in our industry, the acquisition of any of these suppliers by a competitor or any shortage, delay, quality issues, price change, imposition of tariffs or duties or other limitation in our ability to obtain components or technologies we use could result in sales and installation delays, cancellations, and loss of market share.

While we purchase our products from several different suppliers, if one or more of the suppliers that we rely upon to meet anticipated demand ceases or reduces production due to its financial condition, acquisition by a competitor, or otherwise, is unable to increase production as industry demand increases or is otherwise unable to allocate sufficient production to us, it may be difficult to quickly identify alternate suppliers or to qualify alternative products on commercially reasonable terms, and our ability to satisfy this demand may be adversely affected. At times, suppliers may have issues with the quality of their products, which may not be realized until the product has been installed at a customer site. This may result in additional costs incurred. There are a limited number of suppliers of solar energy system components and technologies. While we believe there are other sources of supply for these products available, transitioning to a new supplier may result in additional costs and delays in acquiring our solar products and deploying our systems. These issues could harm our business or financial performance.

In addition, the acquisition of a component supplier or technology provider by one of our competitors could limit our access to such components or technologies and require significant redesigns of our solar energy systems or installation procedures and have a negative impact on our business.

There have also been periods of industry-wide shortages of key components, including solar panels, in times of industry disruption. The manufacturing infrastructure for some of these components has a long lead-time, requires significant capital investment and relies on the continued availability of key commodity materials, potentially resulting in an inability to meet demand for these components. The solar industry is frequently experiencing significant disruption and, as a result, shortages of key components, including solar panels, may be more likely to occur, which in turn may result in price increases for such components. Even if industry-wide shortages do not occur, suppliers may decide to allocate key components with high demand or insufficient production capacity to more profitable customers, customers with long-term supply agreements or customers other than us and our supply of such components may be reduced as a result.

Typically, we purchase the components for our solar energy systems on an as-needed basis and do not operate under long-term supply agreements. The vast majority of our purchases are denominated in U.S. dollars. Since our revenue is also generated in U.S. dollars, we are mostly insulated from currency fluctuations. However, since our suppliers often incur a significant amount of their costs by purchasing raw materials and generating operating expenses in foreign currencies, if the value of the U.S. dollar depreciates significantly or for a prolonged period of time against these other currencies this may cause our suppliers to raise the prices they charge us, which could harm our financial results. Since we purchase most of the solar photovoltaic panels we use from China, we are particularly exposed to exchange rate risk from increases in the value of the Chinese Renminbi.

Although our business has benefited from the declining cost of solar panels, our financial results may be harmed now that the cost of solar panels has stabilized and could increase in the future, due to increases in the cost of solar panels and tariffs on imported solar panels imposed by the U.S. government.

The declining cost of solar panels and the raw materials necessary to manufacture them has been a key driver in the pricing of our solar energy systems and customer adoption of this form of renewable energy. With the stabilization or increase of solar panel and raw materials prices, our growth could slow, and our financial results could suffer. Further, the cost of solar panels and raw materials could increase in the future due to tariff penalties or other factors.

On January 23, 2018, The U.S. government imposed a protective tariff on solar panel components. The U.S. Trade Representative (“USTR”) released the following terms of the tariff:

	Year 1	Year 2	Year 3	Year 4
Safeguard Tariff on Panels and Cells	30%	25%	20%	15%
Cells Exempted from Tariff	2.5 gigawatts	2.5 gigawatts	2.5 gigawatts	2.5 gigawatts

As indicated in the terms, the tariff will not apply to the first 2.5 gigawatts of solar cells imported in each of the four years. Panels imported from China and Taiwan previously were subject to tariffs from a 2012 solar trade case. The current tariff applies to all countries.

As a result of the protective tariffs, and if additional tariffs are imposed or other disruptions to the supply chain occur, our ability to purchase these products on competitive terms or to access specialized technologies from those countries could be limited. Any of those events could harm our financial results by requiring us to account for the cost of trade penalties or to purchase solar panels or other system components from alternative, higher-priced sources.

We act as the licensed general contractor for our customers and are subject to risks associated with construction, cost overruns, delays, regulatory compliance and other contingencies, any of which could have a negative impact on our business and results of operations.

We are a licensed contractor. We are normally the general contractor, electrician, construction manager, and installer for our solar energy systems. We may be liable to customers for any damage we cause to their home, belongings, or property during the installation of our systems. For example, we penetrate our customers’ roofs during the installation process and may incur liability for the failure to adequately weatherproof such penetrations following the completion of installation of solar energy systems. In addition, because the solar energy systems we deploy are high-voltage energy systems, we may incur liability for the failure to comply with electrical standards and manufacturer recommendations. Because our profit on a particular installation is based in part on assumptions as to the cost of such project, cost overruns, delays, or other execution issues may cause us to not achieve our expected results or cover our costs for that project.

In addition, the installation of solar energy systems is subject to oversight and regulation in accordance with national, state, and local laws and ordinances relating to building, fire and electrical codes, safety, environmental protection, utility interconnection and metering, and related matters. We also rely on certain of our employees to maintain professional licenses in many of the jurisdictions in which we operate, and our failure to employ properly licensed personnel could adversely affect our licensing status in those jurisdictions. It is difficult and costly to track the requirements of every authority having jurisdiction over our operations and our solar energy systems. Any new government regulations or utility policies pertaining to our systems, or changes to existing government regulations or utility policies pertaining to our systems, may result in significant additional expenses to us and our customers and, as a result, could cause a significant reduction in demand for our systems.

Compliance with occupational safety and health requirements and best practices can be costly, and noncompliance with such requirements may result in potentially significant monetary penalties, operational delays, and adverse publicity.

The installation of solar energy systems requires our employees to work at heights with complicated and potentially dangerous electrical systems. The evaluation and modification of buildings as part of the installation process requires our employees to work in locations that may contain potentially dangerous levels of asbestos, lead, mold or other materials known or believed to be hazardous to human health. We also maintain a fleet of trucks and other vehicles to support our installers and operations. There is substantial risk of serious injury or death if proper safety procedures are not followed. Our operations are subject to regulation under the U.S. Occupational Safety and Health Act, or OSHA, the U.S. Department of Transportation, or DOT, and equivalent state laws. Changes to OSHA or DOT requirements, or stricter interpretation or enforcement of existing laws or regulations, could result in increased costs. If we fail to comply with applicable OSHA regulations, even if no work-related serious injury or death occurs, we may be subject to civil or criminal enforcement and be required to pay substantial penalties, incur significant capital expenditures or suspend or limit operations. High injury rates could expose us to increased liability. In the past, we have had workplace accidents and received citations from OSHA regulators for alleged safety violations, resulting in fines. Any such accidents, citations, violations, injuries or failure to comply with industry best practices may subject us to adverse publicity, damage our reputation and competitive position and adversely affect our business.

Problems with product quality or performance may cause us to incur warranty expenses, damage our market reputation, and prevent us from maintaining or increasing our market share.

If our products fail to perform as expected while under warranty, or if we are unable to support the warranties or production guarantees, sales of our products may be adversely affected, or our costs may increase, and our business, results of operations, and financial condition could be materially and adversely affected.

We may also be subject to warranty or product liability claims against us that are not covered by insurance or are in excess of our available insurance limits or warranty reserves. In addition, quality issues can have various other ramifications, including delays in the recognition of revenue, loss of revenue, loss of future sales opportunities, increased costs associated with repairing or replacing products, and a negative impact on our goodwill and reputation. The possibility of future product failures could cause us to incur substantial expenses to repair or replace defective products. Furthermore, widespread product failures may damage our market reputation and reduce our market share causing sales to decline.

A failure to comply with laws and regulations relating to our interactions with current or prospective residential customers could result in negative publicity, claims, investigations, and litigation, and adversely affect our financial performance.

In 2021, approximately 77% of our revenue came from on contracts and transactions with residential customers. We must comply with numerous federal, state, and local laws and regulations that govern matters relating to our interactions with residential consumers, including those pertaining to privacy and data security, consumer financial and credit transactions, home improvement contracts, warranties, and door-to-door solicitation. These laws and regulations are dynamic and subject to potentially differing interpretations, and various federal, state and local legislative and regulatory bodies may expand current laws or regulations, or enact new laws and regulations, regarding these matters. Changes in these laws or regulations or their interpretation could dramatically affect how we operate, acquire customers, and manage and use information we collect from and about current and prospective customers and the costs associated therewith. We strive to comply with all applicable laws and regulations relating to our interactions with residential customers. It is possible, however, that these requirements may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another and may conflict with other rules or our practices. Our non-compliance with any such law or regulations could also expose the company to claims, proceedings, litigation and investigations by private parties and regulatory authorities, as well as substantial fines and negative publicity, each of which may materially and adversely affect our business. We have incurred, and will continue to incur, significant expenses to comply with such laws and regulations, and increased regulation of matters relating to our interactions with residential consumers could require us to modify our operations and incur significant additional expenses, which could have an adverse effect on our business, financial condition and results of operations.

If we experience a significant disruption in our information technology systems, fail to implement new systems and software successfully, or if we experience cyber security incidents or have a deficiency in cybersecurity, our business could be adversely affected.

We depend on information systems throughout our company to process orders, manage inventory, process and bill shipments and collect cash from our customers, respond to customer inquiries, contribute to our overall internal control processes, maintain records of our property, plant and equipment, and record and pay amounts due vendors and other creditors. These systems may experience damage or disruption from a number of causes, including power outages, computer and telecommunication failures, computer viruses, malware, ransomware or other destructive software, internal design, manual or usage errors, cyberattacks, terrorism, workplace violence or wrongdoing, catastrophic events, natural disasters and severe weather conditions. We may also be impacted by breaches of our third-party processors.

If we were to experience a prolonged disruption in our information systems that involve interactions with customers and suppliers, it could result in the loss of sales and customers or increased costs, which could adversely affect our overall business operation. Although no such incidents have had a direct, material impact on us, we are unable to predict the direct or indirect impact of any future incidents to our business.

In addition, numerous and evolving cybersecurity threats, including advanced and persistent cyberattacks, phishing and social engineering schemes, particularly on internet applications, could compromise the confidentiality, availability, and integrity of data in our systems. The security measures and procedures we and our customers have in place to protect sensitive data and other information may not be successful or sufficient to counter all data breaches, cyberattacks, or system failures. Although we devote resources to our cybersecurity programs and have implemented security measures to protect our systems and data, and to prevent, detect and respond to data security incidents, there can be no assurance that our efforts will prevent these threats.

Because the techniques used to obtain unauthorized access, or to disable or degrade systems change frequently, have become increasingly more complex and sophisticated, and may be difficult to detect for periods of time, we may not anticipate these acts or respond adequately or timely. As these threats continue to evolve and increase, we may be required to devote significant additional resources in order to modify and enhance our security controls and to identify and remediate any security vulnerabilities.

Seasonality caused by customer demand and weather may cause fluctuations in our financial results.

We often find that some customers tend to book projects by the end of a calendar year to realize the benefits of available subsidy programs prior to year-end. This results in third and fourth quarter revenues being more robust usually at the expense of the first quarter. However, demand for our products may be affected by changes in the buying patterns of our customers.

In addition, the first quarter in California, Nevada and the Northeast often has rain and snow, which also reduces our ability to install in the first quarter relative to the remainder of the year. In the future, this seasonality may cause fluctuations in our financial results. Poor performance because of unseasonable weather conditions whether due to climate change or otherwise, economic conditions or other factors, could have a negative impact on our business, financial condition and operating results for the entire fiscal year. Abnormally wet weather in the spring or summer months could negatively impact our financial results.

Shifts in customer demand or weather are difficult to predict and may not be immediately apparent, and the impact of these changes is difficult to quantify from period to period. There can be no assurance that we will be successful in implementing effective strategies to counter these shifts. In addition, other seasonality trends may develop and the existing seasonality that we experience may change.

If we fail to maintain an effective system of internal control over financial reporting and other business practices, and of board-level oversight, we may not be able to report our financial results accurately or prevent and detect fraud and other improprieties. Consequently, investors could lose confidence in our financial reporting, and this may decrease the trading price of our stock.

We must maintain effective internal controls to provide reliable financial reports and to prevent and detect fraud and other improprieties. We are responsible for reviewing and assessing our internal controls and implementing additional controls when improvement is needed. Failure to implement any required changes to our internal controls or other changes we identify as necessary to maintain an effective system of internal controls could harm our operating results and cause investors to lose confidence in our reported financial information. Any such loss of confidence would have a negative effect on the market price of our stock.

Sarbanes-Oxley Act requirements regarding internal control over financial reporting, and other internal controls over business practices, are costly to implement and maintain, and such costs are relatively more burdensome for smaller companies such as us than for larger companies. We have limited internal personnel to implement procedures and must scale our procedures to be compatible with our resources. We also rely on outside professionals including accountants and attorneys to support our control procedures. We are working to improve all of our controls but, if our controls are not effective, we may not be able to report our financial results accurately or prevent and detect fraud and other improprieties which could lead to a decrease in the market price of our stock.

Risks Relating to our Common Stock

The market price of our common stock may fluctuate significantly, and investors in our common stock may lose all or a part of their investment.

The market prices for securities of solar and energy companies have historically been highly volatile, and the market has from time-to-time experienced significant price and volume fluctuations that are unrelated to the operating performance of particular companies. The price at which our common stock has traded in the recent year has fluctuated greatly. In addition, the market price of our common stock may continue to fluctuate significantly in response to numerous factors, some of which are beyond our control, such as:

- adverse regulatory decisions;
- changes in laws or regulations applicable to our products or services;
- legal disputes or other developments relating to proprietary rights, including patents, litigation matters and the results of any proceedings or lawsuits, including patent or shareholder litigation;
- our dependence on dealers and other third parties;
- announcements of the introduction of new products by our competitors;

- market conditions in the solar and energy sectors;
- announcements concerning product development results or intellectual property rights of others;
- future issuances of common stock or other securities;
- the addition or departure of key personnel;
- failure to meet or exceed any financial guidance or expectations that we may provide to the public;
- actual or anticipated variations in quarterly operating results;
- our failure to meet or exceed the estimates and projections of the investment community;
- overall performance of the equity markets and other factors that may be unrelated to our operating performance or the operating performance of our competitors, including changes in market valuations of similar companies;
- announcements of significant acquisitions, strategic partnerships, joint ventures or capital commitments by us or our competitors;
- issuances of debt or equity securities;
- sales of our common stock by us or our shareholders in the future;
- trading volume of our common stock;
- ineffectiveness of our internal controls;
- publication of research reports about us or our industry or positive or negative recommendations or withdrawal of research coverage by securities analysts;
- general political and economic conditions;
- effects of natural or man-made catastrophic events, including, without limitation, global conflicts or widespread public health epidemics like the pandemic related to COVID-19; and
- other events or factors, many of which are beyond our control.

Further, the equity markets in general have recently experienced extreme price and volume fluctuations. Continued market fluctuations could result in extreme volatility in the price of our common stock, which could cause a decline in the value of our common stock. Price volatility of our common stock might worsen if the trading volume of our common stock is low. The realization of any of the above risks or any of a broad range of other risks, including those described in these “Risk Factors,” could have a dramatic and negative impact on the market price of our common stock.

A substantial number of shares of common stock may be sold in the market, which may depress the market price for our common stock.

A substantial majority of the outstanding shares of our common stock and exercisable options are freely tradable without restriction or further registration under the Securities Act of 1933, as amended.

Pursuant to various “at the market” agreements (“ATM Agreements”) with sales agents (each, an “Agent”), Sunworks has periodically sold shares of common stock (the “Placement Shares”) through an Agent. Sales of the Placement Shares pursuant to ATM Agreements, were deemed to be “at the market offerings” as defined in Rule 415 promulgated under the Securities Act. The Agent acted as sales agent and used commercially reasonable efforts to sell on Sunworks’ behalf all of the Placement Shares requested to be sold by Sunworks, consistent with its normal trading and sales practices, on mutually agreed terms between the Agent and Sunworks. During 2019 Sunworks sold 2,920,968 shares under an ATM Agreement, with net proceeds for the shares of \$6,694,000. In 2020 we sold 17,009,685 shares, with net proceeds of \$41,406,000. In 2021 we sold 5,356,984 shares with net proceeds of \$61,600,000.

Sales of a substantial number of shares of our common stock in the public market, future sales of substantial amounts of shares of our common stock in the public market, or the perception that these sales could occur, could cause the market price of our common stock to decline. Increased sales of our common stock in the market for any reason could exert significant downward pressure on our stock price.

If we fail to comply with the continued minimum closing bid requirements of the Nasdaq Capital Market LLC (“Nasdaq”) or other requirements for continued listing, our common stock may be delisted and the price of our common stock and our ability to access the capital markets could be negatively impacted.

If we fail to comply with continued minimum closing bid requirements or other requirements for continued listing, our common stock may be delisted and the price of our common stock and our ability to access the capital markets could be negatively impacted. A delisting of our common stock from The Nasdaq could materially reduce the liquidity of our common stock and result in a corresponding material reduction in the price of our common stock. In addition, delisting could harm our ability to raise capital through alternative financing sources on terms acceptable to us, or at all, and may result in the potential loss of confidence by investors, employees and fewer business development opportunities.

Trading in our stock has been volatile in volume and price. Therefore, investors may not be able to sell as much stock as they want at prevailing prices. Moreover, low volumes can increase stock price volatility.

Because of the volatility of our common stock, it may be difficult for investors to sell or buy substantial quantities of shares in the public market at any given time at prevailing prices. When trading volume is low, significant price movement can be caused trading a relatively small number of shares.

If securities analysts do not publish research or publish inaccurate or unfavorable research about our business, our stock price and trading volume could decline.

The trading market for our common stock depends in part on the research and reports that securities or industry analysts publish about us or our business. If one or more of the analysts who cover us downgrade our stock or publish inaccurate or unfavorable research about our business, our stock price would likely decline. If one or more of these analysts cease coverage of our company or fail to publish reports on us regularly, demand for our stock could decrease, which might cause our stock price and trading volume to decline.

We do not expect any cash dividends to be paid on our common stock in the foreseeable future.

We have never declared or paid a cash dividend on our common stock, and we do not anticipate paying cash dividends in the foreseeable future. We expect to use future earnings, if any, as well as any capital that may be raised in the future, to fund business growth or retire debt. Consequently, a stockholder’s only opportunity to achieve a return on investment would be for the price of our common stock to appreciate. We cannot assure stockholders of a positive return on their investment when they sell their shares, nor can we assure that stockholders will not lose the entire amount of their investment.

General Risks

Rising interest rates would adversely impact our business.

Rising interest rates, which could be worsened by inflation or an economic recession, may have an adverse impact on our ability to offer attractive pricing on our solar service offerings to customers, which could negatively impact sales of our solar energy offerings.

We may not successfully implement our business model.

Our business model is predicated on our ability to provide solar systems at a profit, and through organic growth, geographic expansion, and strategic acquisitions. We intend to continue to operate as we have previously with sourcing and marketing methods that we have used successfully in the past. However, we cannot assure that our methods will continue to attract new customers in the very competitive solar systems marketplace.

In the event our customers resist paying the prices projected in our business plan to purchase solar installations, our business, financial condition, and results of operations will be materially and adversely affected.

We may not be able to effectively manage our growth.

Our future growth, if any, may cause a significant strain on our management and our operational, financial, and other resources. Our ability to manage our growth effectively will require us to implement and improve our operational, financial, and management systems and to expand, train, manage, and motivate our employees. These demands may require the hiring of additional management personnel and the development of additional expertise by management. Any increase in resources used without a corresponding increase in our operational, financial, and management systems performance could have a negative impact on our business, financial condition, and results of operations.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties.

We lease offices and mixed-use facilities. We do not own any real estate. All facilities are leased. Leases in some cases are month to month with the longest lease expiring in November of 2026.

The table below summarizes those leases for which the original lease term was greater than one year.

Location	Square Footage	Monthly Base Lease Rate	Building Type	Lease Expiration Date
El Paso, TX	4,555	\$ 3,502	Mixed Use	Aug-2022
Tustin CA	2,043	5,108	Office	Aug-2022
Brownsville, TX	3,600	2,381	Mixed Use	Sep-2022
Riverside, CA	11,102	9,385	Mixed Use	Jan-2023
Roseville, CA	3,363	6,894	Office	Feb-2023
Phoenix, AZ	1,800	1,764	Mixed Use	Jun-2023
Tulare, CA	5,000	4,783	Mixed Use	Jul-2023
Albuquerque, NM	5,377	5,000	Mixed Use	Aug-2023
Durham, CA	15,600	11,000	Mixed Use	Oct-2023
Las Vegas, NV	5,900	5,015	Mixed Use	Dec-2023
Sacramento, CA	11,968	8,497	Mixed Use	Feb-2024
Provo, UT	24,747	24,500	Mixed Use	Nov-2026

We have five additional locations with short term leases ranging from four months to twelve months with a total combined monthly lease expense of \$13,900 and a total combined remaining lease obligation of approximately \$131,100 as of December 31, 2021.

All of these properties are adequate for our current needs. We expect that we can extend our leases on these properties, or replace them with similar space, at approximately the same cost.

Item 3. Legal Proceedings.

We are not currently a party to any legal proceedings, not covered by insurance, that individually or in the aggregate, are deemed to be material to our financial condition or results of operations.

Item 4. Mine Safety Disclosures.

Not applicable.

PART II

Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

On March 4, 2015 our common stock began to be traded on The Nasdaq under the symbol “SLTD” that was changed on March 1, 2016 to “SUNW” simultaneously with our name change to Sunworks, Inc. Our common stock previously traded on the OTCQB under the symbol “SLTD.” The market for our common stock was often sporadic, volatile, and limited.

Holders of Common Stock.

On March 11, 2022, we had 85 registered holders of record of our common stock.

Dividends and dividend policy.

We have never declared or paid any dividends on our common stock. We do not anticipate paying dividends on our common stock at the present time or in the foreseeable future. We currently intend to retain earnings, if any, for use in our business.

Unregistered Sales of Equity Securities.

None.

Repurchase of Equity Securities.

None.

Item 6. Selected Financial Data

As a smaller reporting company, we are not required to provide the information under this item, pursuant to Regulation S-K Item 301(c).

Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations.

You should read the following discussion and analysis of our financial condition and results of operations together with our consolidated financial statements and related notes appearing elsewhere in this Annual Report on Form 10-K. This discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions. The actual results may differ materially from those anticipated in these forward-looking statements as a result of certain factors, including, but not limited to, those set forth under “Risk Factors” and elsewhere in this Annual Report on Form 10-K.

Amounts in thousands, except share and per share data

Overview

We provide photovoltaic (“PV”) based power systems for the residential and commercial markets. Commercial projects include commercial, agricultural, industrial and public works projects.

On April 8, 2021, Sunworks, Inc., through its operating subsidiary Sunworks United (the “Buyer”), acquired all of the issued and outstanding membership interests (the “Acquisition”) of Solcius, from Solcius Holdings, LLC (“Seller”). Located in Provo, Utah, Solcius is a full-service, residential solar systems provider. The Acquisition creates a national solar power provider with a presence in various states, including California, Utah, Nevada, Arizona, New Mexico, Texas, Colorado, Minnesota, Wisconsin, Massachusetts, New Jersey and South Carolina. We believe the Acquisition enhances economies of scale, leading to better access to suppliers, vendors and financial partners, as well as marketing and customer acquisition opportunities.

The Acquisition was consummated on April 8, 2021 pursuant to a Membership Interest Purchase Agreement, dated as of April 8, 2021 (the “Purchase Agreement”), by and between Buyer and Seller. The purchase price for Solcius consisted of \$51.75 million in cash, subject to post-closing adjustments related to working capital, cash, indebtedness, and transaction expenses.

Sunworks

Through our Sunworks subsidiaries, we design, arrange financing, integrate, install, and manage systems ranging in size from 2kW (kilowatt) for residential projects to multi-MW (megawatt) systems for larger commercial and public works projects. Commercial installations have included installations at office buildings, manufacturing plants, warehouses, service stations, churches, and agricultural facilities such as farms, wineries, and dairies. Public works installations have included school districts, local municipalities, federal facilities and higher education institutions. Commercial solar represented 23% of our 2021 revenue, compared to 74% of our revenue in 2020. Commercial Solar primarily operates in California.

Solcius

Through our Solcius operating subsidiary, we design, arrange financing, integrate, install, and manage systems, primarily for residential homeowners. We sell residential solar systems through multiple channels, through our network of sales channel partners, as well as, a growing direct sales channel strategy. We operate in several residential markets including California, Utah, Nevada, Arizona, New Mexico, Texas, Colorado, Minnesota, Wisconsin, and South Carolina. We have direct sales and/or operations personnel in California, Nevada, Utah, Arizona, New Mexico, Texas, Colorado, South Carolina, Wisconsin and Minnesota.

Critical Accounting Policies

Our discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”). The preparation of these consolidated financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosures of contingent assets and liabilities. On an ongoing basis, we evaluate our estimates, including those related to impairment of property, plant and equipment, goodwill, intangibles, deferred tax assets, costs to complete projects, and fair value computation using the Black Scholes option pricing model. We base our estimates on historical experience and on various other assumptions, such as the trading value of our common stock and estimated future undiscounted cash flows, that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions; however, we believe that our estimates, including those for the above-described items, are reasonable.

Use of Estimates

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Significant estimates include estimates used to review the Company’s goodwill, intangibles, impairments and estimations of long-lived assets, revenue recognition on construction contracts recognized over time, fair value of assets acquired and liabilities assumed in a business combination, allowances for uncollectible accounts, finance lease right-of-use assets and liabilities, operating lease right-of-use assets and liabilities, warranty reserves, inventory valuation, valuations of non-cash capital stock issuances and the valuation allowance on deferred tax assets. The Company bases its estimates on historical experience and on various other assumptions that are believed to be reasonable in the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

Revenue Recognition

Revenues and related costs on construction contracts are recognized as the performance obligations for work are satisfied over time in accordance with Accounting Standards Codification (“ASC”) 606, *Revenue from Contracts with Customers*. Under ASC 606, revenue and associated profit, engineering, procurement and construction (“EPC”) projects for residential and smaller commercial systems that require us to deliver functioning solar power systems are generally completed within two to twelve months from commencement of construction. Construction on larger commercial and public works projects may be completed within eighteen to thirty-six months, depending on the size and location. We recognize revenue on residential projects following final inspection and approvals by all jurisdictions. We recognize revenue on commercial projects over time as our performance creates or enhances an energy generation asset controlled by the customer.

The cost of materials or equipment will generally be excluded from our recognition of profit, unless specifically produced or manufactured for a project, because such costs are not considered to be a measure of progress. All un-allocable indirect costs and corporate general and administrative costs are charged to the periods as incurred. However, in the event a loss on a contract is foreseen, we will recognize the loss in the period it is determined.

Revisions in cost and profit estimates during the course of the contract are reflected in the accounting period in which the facts which require the revision become known. We use an input method based on costs incurred as we believe that this method most accurately reflects our progress toward satisfaction of the performance obligation. Under this method, revenue arising from fixed-price construction contracts is recognized as work is performed based on the ratio of costs incurred to date to the total estimated costs at completion of the performance obligations. Changes in job performance, job conditions, and estimated profitability, including those arising from contract penalty provisions, and final contract settlements may result in revisions to costs and income and are recognized in the period in which the revisions are determined.

Contract Assets and Liabilities

Contract assets consist of (i) the earned, but unbilled, portion of a project for which payment is deferred by the customer until certain contractual milestones are met; (ii) direct costs, including commissions, labor related costs and permitting fees paid prior to recording revenue, and (iii) unbilled receivables which represent revenue that has been recognized in advance of billing the customer, which is common for larger construction contracts. Contract liabilities consist of deferred revenue and customer deposits and customer advances, which represent consideration received from a customer prior to transferring control of goods or services to the customer under the terms of a contract.

Leases

We determine if an arrangement is a lease at inception. Operating lease right-of-use assets and short-term and long-term lease liabilities are included on the face of the condensed consolidated balance sheet. Finance lease ROU assets are presented within other assets, and finance lease liabilities presented as short-term or long-term finance lease liabilities.

ROU assets represent the right to use an underlying asset for the lease term and lease liabilities represent our obligation to make lease payments arising from the lease. Operating lease ROU assets and liabilities are recognized at commencement date based on the present value of lease payments over the lease term. As most of our leases do not provide an implicit rate, we use an incremental borrowing rate based on the information available at commencement date in determining the present value of lease payments. The operating lease ROU asset also excludes lease incentives. Our lease terms may include options to extend or terminate the lease when it is reasonably certain that we will exercise that option. Lease expense for lease payments is recognized on a straight-line basis over the lease term. We have lease agreements with lease and non-lease components, which are accounted for as a single lease component. For lease agreements with terms less than 12 months, we have elected the short-term lease measurement and recognition exemption, which recognizes such lease payments on a straight-line basis over the lease term.

Business Combinations and Goodwill

The Company accounts for business combinations under the acquisition method of accounting in accordance with ASC 805, “Business Combinations,” where the total purchase price is allocated to the tangible and identified intangible assets acquired and liabilities assumed based on their estimated fair values. The purchase price is allocated using the information currently available, and may be adjusted, up to one year from acquisition date, after obtaining more information regarding, among other things, asset valuations, liabilities assumed and revisions to preliminary estimates. The purchase price in excess of the fair value of the tangible and identified intangible assets acquired less liabilities assumed is recognized as goodwill.

The Company retains a valuation consulting firm to assist in testing for goodwill impairment in the fourth quarter of each year or whenever events or circumstances indicate that the carrying amount of an asset exceeds its fair value and may not be recoverable. In accordance with the Company’s policies, the Company performed a quantitative assessment of goodwill at December 31, 2021. An impairment of \$5,464 of goodwill was recorded. This goodwill was created by the acquisitions of Solar United Network, MD Energy and Plan B in 2014 and 2015 and was expensed. In 2020, as a result of the events and circumstances resulting from the COVID-19 pandemic, the Company’s outlook for revenue, profitability and cash flow had deteriorated. Therefore, the Company performed a quantitative assessment of goodwill at March 31, 2020, where it was determined that the carrying value of goodwill exceeded its fair value at March 31, 2020. As a result, the Company recorded an impairment of \$4,000 at that time.

Stock-Based Compensation

The Company periodically issues restricted stock units (“RSUs”), stock options and performance stock units (“PSUs”) to employees and directors. The Company accounts for RSUs, stock option grants and PSUs issued and vesting to employees based on the authoritative guidance provided by the Financial Accounting Standards Board (“FASB”) whereas the value of the award is measured on the date of grant and recognized over the vesting or performance period.

The Company accounts for stock grants issued to non-employees in accordance with the authoritative guidance of the FASB whereas the value of the stock compensation is based upon the measurement date as determined at either a) the date at which a performance commitment is reached, b) a reasonable probability of reaching the performance obligation has been determined, or c) at the date at which the necessary performance to earn the equity instruments is complete. Non-employee stock-based compensation charges generally are amortized over the vesting period on a straight-line basis. In certain circumstances where there are no future performance requirements by the non-employee, option grants are immediately vested and the total stock-based compensation charge is recorded in the period of the measurement date.

Accounts Receivable

Accounts receivables are recorded on contracts for amounts currently due based upon progress billings, as well as retention, which are collectible upon completion of the contracts. Retention receivable is the amount withheld by a customer until a contract is completed. Retention receivables of \$309 and \$392 were included in the balance of trade accounts receivable as of December 31, 2021, and 2020, respectively.

The Company performs ongoing credit evaluation of its customers. Management monitors outstanding receivables based on factors surrounding the credit risk of specific customers, historical trends, age of receivables and other information, and records bad debts using the allowance method. Accounts receivable are presented net of an allowance for doubtful accounts of \$454 at December 31, 2021, and \$253 at December 31, 2020. During the year ended December 31, 2021, \$454 was recorded as bad debt expense compared to \$710 in 2020.

Inventory

Inventory is valued at lower of cost or net realizable value determined by the first-in, first-out method. Inventory primarily consists of panels, inverters, batteries and mounting racks and other materials. The Company reviews the cost of inventories against their estimated net realizable value and records write-downs if any inventories have costs in excess of their net realizable values. Inventory is presented net of an allowance of \$312 at December 31, 2021 and \$309 at December 31, 2020.

Warranty Liability

The Company establishes warranty liability reserves to provide for estimated future expenses as a result of installation, product and performance defects, product recalls and litigation incidental to the Company's business. Liability estimates are determined based on management's judgment, considering such factors as historical experience, the likely current cost of corrective action, manufacturers' and subcontractors' participation in sharing the cost of corrective action, and consultations with third party experts such as engineers. Solar panel manufacturers currently provide substantial warranties of between ten to twenty-five years with full reimbursement to replace and install replacement panels. Inverter manufacturers currently provide warranties covering ten to fifteen years including replacement and installation. The warranty liability for estimated future warranty costs at December 31, 2021 and 2020 is \$1,251 and \$1,131, respectively.

Income Taxes

The Company uses the liability method of accounting for income taxes. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to consolidated financial statements carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carry-forwards. The measurement of deferred tax assets and liabilities is based on provisions of applicable tax law. The measurement of deferred tax assets is reduced, if necessary, by a valuation allowance based on the amount of tax benefits that, based on available evidence, is not expected to be realized.

Impact of COVID-19

The continued global novel coronavirus and its variants (COVID-19) pandemic, has resulted in significant governmental measures being implemented to control the spread of the virus, including quarantines, travel restrictions and business shutdowns. The uncertain macroeconomic environment created by the COVID-19 pandemic has had and may continue to have a significant, adverse impact on our business. To assist readers in reviewing management's discussion and analysis of financial condition and results of operations, we provide the following discussion regarding the effects COVID-19 has had on the Company, what management expects the future impact to be, how we are responding to evolving circumstances and how we are planning for further COVID-19 uncertainties.

State and local directives, guidelines, and other restrictions, as well as consumer behavior, continue to impact our operations in the regions in which we operate, particularly California. During 2021 we continued to serve customers. COVID-19 and the governmental directives materially disrupted the operations of the local and state governments by closing or restricting operations at city, county and state offices for design reviews, permitting projects, and inspections of projects. Utility companies have been unable to provide timely shutdowns, inspections and interconnection approvals. This disruption negatively impacts our ability to complete projects, generate revenue on projects in backlog and causes many customers to delay decisions on new projects.

Our revenue and gross profit in the year ended December 31, 2021 were negatively impacted by governmental responses to the COVID-19 pandemic, which delayed pre-construction approvals and installation activity for our larger public works, agriculture and commercial projects by delaying approvals and restricting our employees' access to our work sites. Earlier governmental orders and social distancing guidelines slowed our sales process, as our customers avoided interacting with our sales and installation personnel and delayed buying decisions.

We received a loan under the Paycheck Protection Program of \$2,847 which was used to pay for payroll costs, interest on debt, rent, utilities, and group health care benefits, allowing the Company to focus on revenue generating activities in an effort to mitigate some of the impact COVID-19 has on our business. The entire principal of the loan and all accrued interest was forgiven in June of 2021.

Although there is uncertainty around the continued impact and severity the COVID-19 pandemic has had, and will continue to have, on our operations, these developments and measures have negatively affected our business. We will continue to manage the impact through appropriate operational measures. Of concern is how the COVID-19 pandemic continues to spread and could continue to adversely impact our ability to source materials used in our operations or affect our ability to complete ongoing installations in a timely manner. Several of our personnel have been subject to Company-imposed quarantine restrictions based upon possible contact with individuals who have tested positive. We are encouraging our personnel to wear masks and use social distancing and we believe we are taking appropriate In March 2020, the COVID-19 pandemic spread globally, including to the United States, which resulted in significant governmental measures being implemented to control the spread of the virus, including quarantines, travel restrictions and business shutdowns. Although we could not predict the scope and severity of COVID-19, these developments and measures adversely affected our business and our results of operation and financial condition, particularly with respect to operations and our ability to complete ongoing installations in a timely manner. COVID-19 also caused a decline in demand of our products and services.

As the COVID-19 pandemic and its effects evolve, we are monitoring our business to ensure that our expenses are in line with expected cash generation. The extent to which our results are affected by the COVID-19 pandemic will largely depend on future developments which cannot be accurately predicted and are uncertain, but the COVID-19 pandemic has had and will continue to have an adverse effect on our business, operations, financial condition, results of operations, and cash flows.

Results of Operations for the Years Ended December 31, 2021 and 2020

REVENUE AND COST OF GOODS SOLD

For the year ended December 31, 2021, revenue increased to \$101,154 compared to \$37,913 for the year ended December 31, 2020. Approximately 77% of revenue of 2021 was from installations for the residential markets, or \$77,861, compared to 26% of revenue, or \$9,685 for the prior year. The increase in residential revenue is a result of the Solcius acquisition in April 2021. Commercial and public works revenue was approximately 23% of total revenue or \$23,293 for 2021, compared to 74% or \$28,228 of revenue in the prior year. Prior year commercial and public works revenue was higher as a result of a larger public works project installed in 2020.

Cost of goods sold for the year ended December 31, 2021, was \$56,507 or 55.9% of revenue compared to \$29,902 or 78.9% of revenue reported for the year ended December 31, 2020. The increase in cost of goods sold is primarily the result of the April 8, 2021 acquisition of Solcius.

Gross profit was \$44,647 for the year ended December 31, 2021. This compares to \$8,011 of gross profit for the prior year. The gross margin improved to 44.1% in 2021 compared to 21.1% in 2020. The margin improvement is the result of the Solcius acquisition and the related gross margin on residential projects combined with improved margin on commercial projects in 2021.

Revenue and gross profit in the year ended December 31, 2021 were positively impacted by the Solcius acquisition and improving market conditions. In contrast, the prior year operating results were negatively impacted by COVID 19 and the governmental responses to the pandemic.

SELLING AND MARKETING EXPENSES

For the year ended December 31, 2021, the Company's selling and marketing expenses were \$32,760 compared to \$5,646 for the year ended December 31, 2020. As a percentage of revenue, selling and marketing expenses were 32.4% of revenue in 2021 compared to 14.9% of revenue in 2020. The increased expenses were largely related to the Solcius acquisition and additional marketing spend for dealer commissions, advertising and branding. The Solcius sales and marketing model focuses on lead generation and effective interaction with a network of authorized dealers and third-party sales organizations. During the year, we invested in sales and marketing to expand our lead generation efforts and improve brand awareness. Additionally, these investments are targeted at positively impacting our ability to enter additional markets and grow our in-house sales capability for residential markets.

GENERAL AND ADMINISTRATIVE EXPENSES

Total G&A expenses of \$26,036 for the year ended December 31, 2021, increased compared to \$13,116 for the year ended December 31, 2020. The G&A expenses increased from the prior year primarily as a result of the Solcius acquisition in April of 2021.

GOODWILL IMPAIRMENT

Goodwill impairment recorded for the years ended December 31, 2021 and 2020 was \$5,464 and \$4,000, respectively. At December 31, 2021 we performed a quantitative assessment of goodwill and determined that the remaining carrying of goodwill resulting from the acquisitions made in 2014 and 2015 exceeded their fair value and we recorded an impairment for the remaining balances. In March 2020, as a result of the events and circumstances resulting from the COVID-19 pandemic, our outlook for revenue, profitability and cash flow deteriorated. Therefore, we performed a quantitative assessment of goodwill at March 31, 2020. It was determined that the carrying value of goodwill exceeded its fair value at March 31, 2020 and, as a result, we recorded an impairment of \$4,000 during the first quarter of 2020.

STOCK-BASED COMPENSATION EXPENSES

During the year ended December 31, 2021 we incurred \$3,734 in total non-cash stock-based compensation expense, compared to \$147 for the prior year. The year over year increase in stock-based compensation is the result of the company expanding RSU and stock option grants as part of the compensation structure to a broader population of employees.

DEPRECIATION AND AMORTIZATION

Depreciation and amortization expense for the year ended December 31, 2021, was \$5,877, compared to \$337 for the prior year. Depreciation and amortization expenses increased as a result of the Solcius acquisition which resulted in an increase in property and equipment and \$15,600 of identified intangible assets of Solcius. The total \$15,600 balance of intangible assets is being amortized over the estimated useful lives of the specific assets. The estimated useful lives range from nine months to ten years. The amortization expense from the April 2021 Solcius acquisition through December 2021 was \$5,140.

OTHER INCOME (EXPENSE), NET

Other income was \$2,599 for the year ended December 31, 2021, compared to an expense of \$704 for the year 2020. Other income is primarily the result of the June 2021 forgiveness of the Paycheck Protection Program loan of \$2,847 and \$34 of accrued loan interest. Interest expense for 2021 was \$381 compared to \$714 during 2020. The 2021 interest expense includes an estimated accrual for possible interest in the settlement of a sales tax liability from earlier years. The 2020 interest expense was primarily related to the interest paid on a \$2.25 million loan balance outstanding pursuant to a senior promissory note plus the amortization of a \$435 exit fee and the origination loan fees that were both shown as interest expense in the prior year period.

NET LOSS

The net loss for the year ended December 31, 2021 was \$26,625 and includes the goodwill impairment expense of \$5,464 and the amortization Solcius intangibles of \$5,140. The net loss for the year ended December 31, 2020 was \$15,939 including the \$4,000 goodwill impairment expense.

Liquidity and Capital Resources

We had \$19,719 in unrestricted cash at December 31, 2021, as compared to \$38,991 at December 31, 2020. We believe that the aggregate of our existing cash and cash equivalents is sufficient to meet our operating cash requirements and strategic objectives for growth for at least the next year. To satisfy our capital requirements, including acquisitions and ongoing future operations, we will likely seek to raise additional financing through debt and equity financings.

On January 27, 2021, the Company filed a Registration Statement on Form S-3 (File No. 333-252475) (the "Registration Statement"), with the SEC. The Registration Statement allows the Company to offer and sell, from time to time in one or more offerings, any combination of common stock, preferred stock, warrants, or units having an aggregate initial offering price not to exceed \$100 million. The Registration Statement was declared effective by the SEC on February 3, 2021. In 2021 we sold 5,356,984 shares with gross proceeds of approximately \$63 million. Approximately \$37 million of the \$100 million total is available for future offerings pursuant to the Registration Statement.

As of December 31, 2021, our working capital surplus was \$28,736 compared to a working capital surplus of \$30,890 at December 31, 2020.

During the year ended December 31, 2021, we used \$29,210 of cash in operating activities compared to \$4,337 used in operating activities for the prior year ended December 31, 2020. The cash used in operating activities was primarily the result of the current year net loss combined with investments in working capital to secure inventory and minimize the impacts of supply chain disruption.

Net cash used in investing activities totaled \$51,325 for the year ended December 31, 2021, including \$50,619 net cash used to complete the Solcius acquisition and the remaining for purchases of property, plant and equipment. The cash used in investing activities in the 2020 totaled \$26 for minor equipment purchases.

Net cash provided by financing activities during the year ended December 31, 2021 was \$61,238. This increase was primarily due to net proceeds from sales of our common stock in 2021.

Net cash provided by financing activities during the year ended December 31, 2020 was \$40,163. This is due to net proceeds of \$41,406 received from the At the Market offerings, proceeds from a Paycheck Protection Loan of \$2,847 partially offset by the repayment of the \$3,750 promissory note payable and principal payments on acquisition and equipment debt totaling \$340.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements that are reasonably likely to have a current or future effect on our financial condition, revenues, results of operations, liquidity, or capital expenditures.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Not applicable.

Item 8. Financial Statements and Supplementary Data.

SUNWORKS, INC.

CONSOLIDATED FINANCIAL STATEMENTS

FOR THE YEARS ENDED DECEMBER 31, 2021 AND 2020

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of
Sunworks, Inc.

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Sunworks, Inc. (the “Company”) as of December 31, 2021 and 2020, the related consolidated statements of operations, shareholders’ equity and cash flows for each of the two years in the period ended December 31, 2021, and the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2021, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (“PCAOB”) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the consolidated financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the consolidated financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of the critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing a separate opinion on the critical audit matters or on the accounts or disclosures to which they relate.

Revenue Recognition – Estimated Costs to Complete Long-Term Contracts

Critical Audit Matter Description

As described in Notes 2 and 4 to the consolidated financial statements, the Company recognizes revenue over time on certain long-term contracts that are completed within eighteen to thirty-six months, as the Company’s performance creates or enhances an energy generation asset controlled by the customer. The Company uses an input method based on costs incurred (generally excluding costs of materials or equipment) as management believes that this method most accurately reflects progress toward satisfaction of the performance obligation. Under this method, revenue arising from fixed-price construction contracts is recognized as work is performed based on the ratio of costs incurred to date to the total estimated costs at completion of the performance obligations. Changes in job performance, job conditions, and estimated profitability, including those arising from contract penalty provisions, and final contract settlements may result in revisions to costs and income and are recognized in the period in which the revisions are determined.

We identified estimated costs to complete long-term contracts as a critical audit matter. The determination of the total estimated cost and progress toward completion requires management to make significant estimates and assumptions. Changes in these estimates can have a significant impact on the revenue recognized each period. Auditing these estimates involved especially challenging auditor judgment in evaluating the reasonableness of management’s assumptions and estimates over the duration of these contracts due to the lack of objectively verifiable evidence used in the estimation process. As a result, there is a high degree of auditor judgment involved in performing procedures on the Company’s estimates.

How the Critical Audit Matter Was Addressed in the Audit

The primary procedures we performed to address this critical audit matter included, among others, performing job site visits for a sample of open projects at the end of the year. In addition, we assessed the reasonableness of project revenues and cost forecasts by selecting a sample of open projects by: (i) obtaining and inspecting the related contract agreements, amendments and change orders to test the existence of customer arrangements and understand the scope and pricing of the related projects; (ii) performing inquiries of management and project personnel regarding facts and circumstances related to the estimates to complete for these projects; (iii) testing key components of the estimated costs to complete, including materials (as applicable), labor, and subcontractors costs and agreeing actual costs incurred to supporting documentation; and (iv) recalculating revenues recognized based on the project’s percentage of completion and management’s estimate of transaction price. In addition, we performed certain retrospective review procedures to assess management’s historical ability to accurately estimate the transaction price and costs to complete contracts.

Solcius, LLC Business Combination

Critical Audit Matter Description

As described in Notes 1, 2 and 3 to the consolidated financial statements, on April 8, 2021, the Company acquired Solcius, LLC (“Solcius”) pursuant to a membership interest purchase agreement. The Company paid \$51,750,000 in cash to the members of Solcius. The Company applied the acquisition method of accounting to the acquired assets and assumed liabilities of Solcius. The allocation of the purchase price included identified intangible assets with an estimated aggregate fair value of \$15.6 million. The estimated fair value of each of the identifiable intangible assets was determined by management based on various valuation methodologies as determined by an external valuation specialist.

Given that the accounting for the transaction required management to make significant judgments in estimating the fair value of the identifiable intangible assets, auditing the transaction was challenging and complex as it required a high degree of auditor judgment and an increased extent of effort, including the need to involve a valuation specialist.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to the accounting for the Solcius transaction included the following, among others, obtaining an understanding of management’s assessment of the accounting treatment for the transaction through inspection of the membership interest purchase agreement and evaluation of the Company’s analysis which considered the significant terms of the membership interest purchase agreement and the relevant accounting guidance. To test the estimated fair value of the identifiable intangible assets, we evaluated the reasonableness of the valuation methodologies, with the assistance of a valuation specialist, and tested the completeness and accuracy of the underlying data used by management to develop the assumptions. In addition, we assessed the appropriateness of management’s disclosures of the Solcius business combination.

/s/ KMJ Corbin & Company LLP

We have served as the Company’s auditor since 2020.

Irvine, California

March 11, 2022

SUNWORKS, INC.
CONSOLIDATED BALANCE SHEETS
AS OF DECEMBER 31, 2021 AND 2020
(in thousands, except share and per share data)

Assets	<u>December 31, 2021</u>	<u>December 31, 2020</u>
Current Assets:		
Cash and cash equivalents	\$ 19,719	\$ 38,991
Restricted cash	323	348
Accounts receivable, net	4,568	2,890
Inventory	10,219	1,179
Contract assets	14,498	2,397
Other current assets	4,154	137
Total Current Assets	53,481	45,942
Property and equipment, net	3,195	198
Finance lease right-of-use assets, net	1,407	-
Operating lease right-of-use assets	2,502	694
Deposits	132	47
Intangible assets, net	7,910	-
Goodwill	32,186	5,464
Total Assets	\$ 100,813	\$ 52,345
Liabilities and Shareholders' Equity		
Current Liabilities:		
Accounts payable and accrued liabilities	\$ 11,127	\$ 7,356
Contract liabilities	12,201	6,260
Finance lease liability, current portion	424	-
Operating lease liability, current portion	993	649
Paycheck Protection Program loan payable, current portion	-	787
Total Current Liabilities	24,745	15,052
Long-Term Liabilities:		
Finance lease liability, net of current portion	542	-
Operating lease liability, net of current portion	1,509	45
Paycheck Protection Program loan payable, net of current portion	-	2,060
Warranty liability	1,251	1,131
Total Long-Term Liabilities	3,302	3,236
Total Liabilities	28,047	18,288
Commitments and contingencies		
Shareholders' Equity:		
Preferred stock Series B, \$0.001 par value, 5,000,000 authorized shares; no shares issued and outstanding	-	-
Common stock, \$0.001 par value; 50,000,000 authorized shares; 29,193,772 and 23,835,258 shares issued and outstanding, at December 31, 2021 and 2020, respectively	29	24
Additional paid-in capital	187,997	122,668
Accumulated deficit	(115,260)	(88,635)
Total Shareholders' Equity	72,766	34,057
Total Liabilities and Shareholders' Equity	\$ 100,813	\$ 52,345

The accompanying notes are an integral part of these consolidated financial statements.

SUNWORKS, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
FOR THE YEARS ENDED DECEMBER 31, 2021 AND 2020
(in thousands, except share and per share data)

	2021	2020
Revenue, net	\$ 101,154	\$ 37,913
Cost of Goods Sold	56,507	29,902
Gross Profit	44,647	8,011
Operating Expenses		
Selling and marketing	32,760	5,646
General and administrative	26,036	13,116
Goodwill impairment	5,464	4,000
Stock-based compensation	3,734	147
Depreciation and amortization	5,877	337
Total Operating Expense	73,871	23,246
Operating Loss	(29,224)	(15,235)
Other Income (Expense)		
Other income, net	2,894	10
Interest expense	(381)	(714)
Gain on disposal of property and equipment	86	-
Total Other Income (Expense), net	2,599	(704)
Loss Before Income Taxes	(26,625)	(15,939)
Income Tax Expense	-	-
Net Loss	(26,625)	\$ (15,939)
Deemed dividend on repricing of warrants (See Note 15)	-	(60)
Net Loss available to common shareholders	\$ (26,625)	\$ (15,999)
Net Loss per common share, basic and diluted	\$ (0.99)	\$ (1.03)
WEIGHTED-AVERAGE COMMON SHARES OUTSTANDING		
Basic and diluted	26,947,023	15,600,455

The accompanying notes are an integral part of these consolidated financial statements.

SUNWORKS, INC.
CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
FOR THE YEARS ENDED DECEMBER 31, 2021 AND 2020
(in thousands, except share data)

	<u>Common stock</u>		<u>Additional Paid-in Capital</u>	<u>Accumulated Deficit</u>	<u>Total</u>
	<u>Shares</u>	<u>Amount</u>			
Balance at December 31, 2019	6,805,697	\$ 7	\$ 81,132	\$ (72,696)	\$ 8,443
Issuance of common stock under terms of restricted stock grants	5,952	-	63	-	63
Issuance of common stock for cashless exercise of options	13,924	-	-	-	-
Sales of common stock pursuant to S-3 registration statement, net	17,009,685	17	41,389	-	41,406
Stock-based compensation	-	-	84	-	84
Net loss	-	-	-	(15,939)	(15,939)
Balance at December 31, 2020	<u>23,835,258</u>	<u>24</u>	<u>122,668</u>	<u>(88,635)</u>	<u>34,057</u>
Issuance of common stock for cashless exercise of options	1,530	-	-	-	-
Sales of common stock pursuant to S-3 registration statement, net	5,356,984	5	61,595	-	61,600
Stock-based compensation	-	-	3,734	-	3,734
Net loss	-	-	-	(26,625)	(26,625)
Balance at December 31, 2021	<u>29,193,772</u>	<u>\$ 29</u>	<u>\$ 187,997</u>	<u>\$ (115,260)</u>	<u>\$ 72,766</u>

The accompanying notes are an integral part of these consolidated financial statements.

SUNWORKS, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE YEARS ENDED DECEMBER 31, 2021 AND 2020
(in thousands)

	2021	2020
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	\$ (26,625)	\$ (15,939)
Adjustments to reconcile net loss to net cash used in operating activities		
Depreciation and amortization	5,877	337
Amortization of right-of-use asset	1,066	811
(Gain) loss on sale of equipment	(86)	2
Paycheck Protection Program loan forgiveness	(2,881)	-
Stock-based compensation	3,734	147
Goodwill impairment	5,464	4,000
Amortization of debt issuance costs	-	266
Bad debt expense	454	710
Changes in Operating Assets and Liabilities, net of acquisition:		
Accounts receivable	(403)	4,006
Inventory	(5,207)	1,791
Deposits and other current assets	(2,408)	160
Contract assets	(4,765)	2,467
Accounts payable and accrued liabilities	(3,152)	(3,865)
Contract liabilities	668	891
Warranty liability	120	690
Operating lease liability	(1,066)	(811)
NET CASH USED IN OPERATING ACTIVITIES	(29,210)	(4,337)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchase of Solcius LLC, net cash acquired	(50,619)	-
Purchase of property and equipment	(805)	(27)
Proceeds from sale of property and equipment	99	1
NET CASH USED IN INVESTING ACTIVITIES	(51,325)	(26)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Loans payable and acquisition convertible promissory note repayments	-	(340)
Promissory note payable repayment	-	(3,750)
Principal payments on finance lease liabilities	(362)	-
Proceeds from Paycheck Protection Program loan payable	-	2,847
Proceeds from sales of common stock, net	61,600	41,406
NET CASH PROVIDED BY FINANCING ACTIVITIES	61,238	40,163
NET CHANGE IN CASH, CASH EQUIVALENTS, AND RESTRICTED CASH	(19,297)	35,800
CASH, CASH EQUIVALENTS, AND RESTRICTED CASH, BEGINNING OF YEAR	39,339	3,539
CASH, CASH EQUIVALENTS, AND RESTRICTED CASH, END OF YEAR	\$ 20,042	\$ 39,339
Cash and cash equivalents	\$ 19,719	\$ 38,991
Restricted cash	323	348
CASH, CASH EQUIVALENTS, AND RESTRICTED CASH, END OF YEAR	\$ 20,042	\$ 39,339
CASH PAID FOR:		
Interest	\$ 57	\$ 840
Franchise and corporate excise taxes	\$ 42	\$ 243
SUPPLEMENTAL DISCLOSURES OF NON-CASH TRANSACTIONS		
Increase in operating right-of-use assets and liabilities due to lease modification	\$ 132	\$ -
Right-of-use assets obtained in exchange for new operating lease liability	\$ 1,056	\$ -
Right-of-use assets obtained in exchange for new finance lease liability	\$ 492	\$ -

The accompanying notes are an integral part of these consolidated financial statements.

SUNWORKS, INC.
Notes to Consolidated Financial Statements
December 31, 2021 and 2020
(dollars in thousands, except share and per share data)

1. ORGANIZATION AND LINE OF BUSINESS

Organization and Line of Business

Sunworks, Inc. (“We” or the “Company”) was originally incorporated in Delaware on January 30, 2002 as MachineTalker, Inc. In July 2010, the Company changed its name to Solar3D, Inc. On January 31, 2014, the Company acquired Solar United Network Inc., a California corporation. On March 2, 2015, the Company acquired the assets of MD Energy LLC. On December 1, 2015, the Company acquired Plan B Enterprises, Inc. (“Plan B”) through a merger of Plan B into our wholly owned subsidiary, Elite Solar Acquisition Sub., Inc. On March 1, 2016 the Company changed its name to Sunworks, Inc. with simultaneous Nasdaq stock symbol change from SLTD to SUNW. On the same day, Solar United Network Inc. changed its name to Sunworks United.

On April 8, 2021, Sunworks, Inc., through its operating subsidiary Sunworks United (the “Buyer”), acquired all of the issued and outstanding membership interests (the “Acquisition”) of Solcius, from Solcius Holdings, LLC (“Seller”). Located in Provo, Utah, Solcius is a full-service, residential solar systems provider. The Acquisition creates a national solar power provider with a presence in various states, including California, Utah, Nevada, Arizona, New Mexico, Texas, Colorado, Minnesota, Wisconsin, Massachusetts, New Jersey and South Carolina. The Company believes the Acquisition enhances economies of scale, leading to better access to suppliers, vendors and financial partners, as well as marketing and customer acquisition opportunities.

The Acquisition was consummated on April 8, 2021 pursuant to a Membership Interest Purchase Agreement, dated as of April 8, 2021 (the “Purchase Agreement”), by and between Buyer and Seller. The purchase price for Solcius consisted of \$51,750 in cash, subject to post-closing adjustments related to working capital, cash, indebtedness and transaction expenses. The acquired assets and operating results of Solcius are included in these consolidated financial statements and footnotes since the date of acquisition through December 31, 2021 (see Note 3).

During 2021 the Company merged the remaining assets of MD Energy LLC into Plan B and renamed the entity Commercial Solar Energy, Inc (“CSE”). CSE became a subsidiary of Sunworks United.

We provide photo voltaic (“PV”) based power systems for the residential and commercial markets. Commercial projects include commercial, agricultural, industrial and public works projects. We operate in several residential and commercial markets including California, Oregon, Utah, Nevada, Arizona, New Mexico, Texas, Colorado, Minnesota, Wisconsin, Massachusetts, New Jersey, Hawaii and South Carolina. We have direct sales or operations personnel in California, Nevada, Massachusetts, Utah, Arizona, New Mexico, Texas, Colorado, South Carolina, Wisconsin and Minnesota. Through our operating subsidiaries, we design, arrange financing, integrate, install, and manage systems ranging in size from 2kW (kilowatt) for residential projects to multi-MW (megawatt) systems for larger commercial and public works projects. Commercial installations have included installations at office buildings, manufacturing plants, warehouses, service stations, churches, and agricultural facilities such as farms, wineries, and dairies. Public works installations have included school districts, local municipalities, federal facilities and higher education institutions.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

This summary of significant accounting policies of Sunworks, Inc. is presented to assist in understanding the Company's consolidated financial statements. These accounting policies conform to generally accepted accounting principles used in the United States ("GAAP") and have been consistently applied in the preparation of the consolidated financial statements.

Principles of Consolidation

The accompanying consolidated financial statements include the accounts of Sunworks, Inc., and its wholly-owned operating subsidiaries, Sunworks United Inc., Commercial Solar Energy, Inc. and Solcius LLC. All material intercompany transactions have been eliminated upon consolidation of these entities.

Use of Estimates

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Significant estimates include estimates used to review the Company's goodwill, intangibles, impairments and estimations of long-lived assets, revenue recognition on construction contracts recognized over time, fair value of assets acquired and liabilities assumed in a business combination, allowances for uncollectible accounts, finance lease right-of-use assets and liabilities, operating lease right-of-use assets and liabilities, warranty reserves, inventory valuation, valuations of non-cash capital stock issuances and the valuation allowance on deferred tax assets. The Company bases its estimates on historical experience and on various other assumptions that are believed to be reasonable in the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

Reclassifications

Certain reclassifications have been made to prior year's consolidated financial statements to conform to classifications used in the current year. Sales commissions, finders' fees and financing fees paid to third parties have been reclassified from cost of goods sold to selling and marketing in the consolidated statements of operations with no change in the previously reported net losses. Customer deposits have been reclassified and included in contract liabilities.

Revenue Recognition

Revenue and related costs on construction contracts are recognized as the performance obligations for work are satisfied over time in accordance with Accounting Standards Codification ("ASC") 606, Revenue from Contracts with Customers. Under ASC 606, revenue and associated profit, engineering, procurement and construction ("EPC") projects for residential and smaller commercial systems that require us to deliver functioning solar power systems are generally completed within two to twelve months from commencement of construction. Construction on larger commercial projects may be completed within eighteen to thirty-six months, depending on the size and location. We recognize revenue from commercial EPC services over time as our performance creates or enhances an energy generation asset controlled by the customer.

For residential contracts, the Company recognizes revenue upon completion of the job as determined by final inspection. We recognize revenue for systems operations and maintenance over the term of the service period.

For commercial projects, we commence recognizing performance revenue when work starts on the job and continue recognizing revenue over time as work is performed based on the ratio of costs incurred, excluding modules and components, compared to the total estimated non-materials costs at completion of the performance obligations.

Judgment is required to evaluate assumptions including the amount of net contract revenue and the total estimated costs to determine the Company's progress towards contract completion and to calculate the corresponding amount of revenue to recognize. If estimated total costs on any contract are greater than the net contract revenue, the Company recognizes the entire estimated loss in the period the loss becomes known.

Changes in estimates for commercial projects occur for a variety of reasons, including, but not limited to (i) construction plan accelerations or delays, (ii) product cost forecast changes, (iii) change orders, or (iv) changes in other information used to estimate costs. Changes in estimates may have a material effect in the Company's consolidated statements of operations. The table below outlines the impact on revenue of net changes in estimated transaction prices and input costs for systems related sales contracts (both increases and decreases) for the years ended December 31, 2021 and 2020 as well as the number of projects that comprise such changes. For purposes of the following table, only projects with changes in estimates that have an impact on revenue and or cost of at least \$100, calculated on a quarterly basis during the periods, were presented. Also included in the table is the net change in estimate as a percentage of the aggregate revenue for such projects.

(In thousands, except number of projects)	Year Ended	
	December 31, 2021	December 31, 2020
Increase in revenue from net changes in transaction prices	\$ 286	\$ 62
Increase (decrease) in revenue from net changes in input cost estimates	815	(299)
Net increase (decrease) in revenue from net changes in estimates	\$ 1,101	\$ (237)
Number of projects	9	5
Net change in estimate as a percentage of aggregate revenue for associated projects	8.3%	(1.8)%

Contract Assets and Liabilities

Contract assets consist of (i) the earned, but unbilled, portion of a project for which payment is deferred by the customer until certain contractual milestones are met; (ii) direct costs, including commissions, labor related costs and permitting fees paid prior to recording revenue, and (iii) unbilled receivables which represent revenue that has been recognized in advance of billing the customer, which is common for larger construction contracts. Contract liabilities consist of deferred revenue, customer deposits and customer advances, which represent consideration received from a customer prior to transferring control of goods or services to the customer under the terms of a contract. Total contract assets and contract liabilities balances as of the respective dates are as follows:

(In thousands)	As of	
	December 31, 2021	December 31, 2020
Contract Assets	\$ 14,498	\$ 2,397
Contract Liabilities	12,201	6,260

During the year ended December 31, 2021, the Company recognized revenue of \$4,511 that was included in contract liabilities as of December 31, 2020. During the year ended December 31, 2020, the Company recognized revenue of \$4,730 that was included in contract liabilities as of December 31, 2019.

The following table represents the average percentage of completion as of December 31, 2021 for EPC projects that the Company is constructing. The Company expects to recognize \$18,289 of revenue upon transfer of control of the projects.

Project	Revenue Category	Expected Years Revenue Recognition Will Be Completed	Average Percentage of Revenue Recognized
Various Projects	EPC services	2022 - 2023	58.7%

Accounts Receivable

Accounts receivables are recorded on contracts for amounts currently due based upon progress billings, as well as retention, which are collectible upon completion of the contracts. Retention receivable is the amount withheld by a customer until a contract is completed. Retention receivables of \$309 and \$392 were included in the balance of trade accounts receivable as of December 31, 2021, and 2020, respectively.

The Company performs ongoing credit evaluation of its customers. Management monitors outstanding receivables based on factors surrounding the credit risk of specific customers, historical trends, age of receivables and other information, and records bad debts using the allowance method. Accounts receivable are presented net of an allowance for doubtful accounts of \$454 at December 31, 2021, and \$253 at December 31, 2020. During 2021, \$454 was recorded as bad debt expense compared to \$710 in 2020.

Cash and Cash Equivalents

The Company considers all highly liquid investments with an original maturity of three months or less to be cash equivalents.

Restricted Cash

The Company considers restricted cash to be cash balances that have legal or contractual restrictions imposed by a third party and are restricted as to withdrawal or use except for the specified purpose.

Concentration Risk

Cash includes amounts deposited in financial institutions in excess of insurable Federal Deposit Insurance Corporation ("FDIC") limits. At times throughout the year, the Company may maintain cash balances in certain bank accounts in excess of FDIC limits. As of December 31, 2021 and 2020, the cash balance in excess of the FDIC limits was \$19,631 and \$38,981, respectively. The Company has not experienced any losses in such accounts and believes it is not exposed to any significant credit risk in these accounts.

Inventory

Inventory is valued at lower of cost or net realizable value determined by the first-in, first-out method. Inventory primarily consists of panels, inverters, batteries, optimizers, mounting racks and other materials. The Company reviews the cost of inventories against their estimated net realizable value and records write-downs if any inventories have costs in excess of their net realizable values. Inventory is presented net of an allowance of \$312 at December 31, 2021 and \$309 at December 31, 2020.

Property and Equipment

Property and equipment are stated at cost. Depreciation for property and equipment commences when it is put into service and are depreciated using the straight-line method over property and equipment's estimated useful lives:

Machinery & equipment	3-7 Years
Office equipment & furniture	5-7 Years
Computers & software	3-5 Years
Vehicles & trailers	3-7 Years
Leasehold improvements	3-5 Years

Leases

The Company determines if an arrangement is a lease at inception. Operating lease right-of-use assets ("ROU assets") and short-term and long-term lease liabilities are included in the consolidated balance sheet. With the acquisition of Solcius in April 2021, the Company has finance lease ROU assets and finance lease liabilities, which are presented in the consolidated balance sheet.

ROU assets represent the right to use an underlying asset for the lease term and lease liabilities represent the Company's obligation to make lease payments arising from the lease. Operating and finance lease ROU assets and liabilities are recognized at commencement date based on the present value of lease payments over the lease term. As most of the Company's leases do not provide an implicit rate, the Company uses an incremental borrowing rate based on the information available at the commencement date in determining the present value of lease payments. The operating and finance lease ROU asset also excludes lease incentives. The Company's lease terms may include options to extend or terminate the lease when it is reasonably certain that the Company will exercise that option. Lease expense for lease payments is recognized on a straight-line basis over the lease term. The Company has lease agreements with lease and non-lease components, which are accounted for as a single lease component. For lease agreements with terms less than 12 months, the Company has elected the short-term lease measurement and recognition exemption, and the Company recognizes such lease payments on a straight-line basis over the lease term.

Warranty Liability

The Company establishes warranty liability reserves to provide for estimated future expenses as a result of installation, product and performance defects, product recalls and litigation incidental to the Company's business. Liability estimates are determined based on management's judgment, considering such factors as historical experience, the likely current cost of corrective action, manufacturers' and subcontractors' participation in sharing the cost of corrective action, and consultations with third party experts such as engineers. Solar panel manufacturers currently provide substantial warranties of between ten to twenty-five years with full reimbursement to replace and install replacement panels. Inverter manufacturers currently provide warranties covering ten to fifteen years including replacement and installation. The warranty liability for estimated future warranty costs at December 31, 2021 and 2020 is \$1,251 and \$1,131, respectively.

Advertising and Marketing

The Company expenses advertising and marketing costs as incurred. Advertising and marketing costs may include printed material, billboards, sponsorships, direct mail, radio, telemarketing, tradeshow costs, magazine, and catalog advertisement. Advertising and marketing costs for the years ended December 31, 2021 and 2020 were \$864 and \$107, respectively.

Stock-Based Compensation

The Company periodically issues stock options and restricted stock units ("RSU") to employees and non-employees. The Company accounts for stock option and RSU grants issued and vesting to employees based on the authoritative guidance provided by the Financial Accounting Standards Board ("FASB") whereas the value of the award is measured on the date of grant and recognized over the vesting period. The Company accounts for stock option and RSU grants issued and vesting to non-employees in accordance with the authoritative guidance of the FASB whereas the value of the stock compensation is based upon the measurement date as determined at either a) the date at which a performance commitment is reached, or b) at the date at which the necessary performance to earn the equity instruments is complete. Non-employee stock-based compensation charges generally are amortized over the vesting period on a straight-line basis. In certain circumstances where there are no future performance requirements by the non-employee, option grants are immediately vested and the total stock-based compensation charge is recorded in the period of the measurement date.

Basic and Diluted Net (Loss) per Share Calculations

(Loss) per Share dictates the calculation of basic earnings (loss) per share and diluted earnings per share. Basic earnings (loss) per share are computed by dividing income (loss) available to common shareholders by the weighted-average number of common shares available. Diluted earnings per share is computed similar to basic earnings per share except that the denominator is increased to include the number of additional common shares that would have been outstanding if the potential common shares had been issued and if the additional common shares were dilutive. The shares for employee options, restricted stock, warrants and convertible notes were not used in the calculation of the net loss per share.

A net loss causes all outstanding common stock options to be anti-dilutive. As a result, the basic and diluted losses per common share are the same for the year ended December 31, 2021 and 2020.

As of December 31, 2021, the potentially dilutive securities were excluded from the computations of weighted average shares outstanding including 290,684 stock options, and 1,185,889 unvested RSUs.

As of December 31, 2020, the potentially dilutive securities were excluded from the computations of weighted average shares outstanding including 88,441 stock options.

Dilutive per share amounts are computed using the weighted-average number of common shares outstanding and potentially dilutive securities, using the treasury stock method, if their effect would be dilutive.

Long-Lived Assets

The Company reviews its property and equipment and any identifiable intangibles for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. The test for impairment is required to be performed by management at least annually. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to the future undiscounted operating cash flow expected to be generated by the asset. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the asset exceeds the fair value of the asset. Long-lived assets to be disposed of are reported at the lower of carrying amount or fair value less costs to sell.

Business Combinations and Goodwill

The Company accounts for business combinations under the acquisition method of accounting in accordance with ASC 805, "Business Combinations," where the total purchase price is allocated to the tangible and identified intangible assets acquired and liabilities assumed based on their estimated fair values. The purchase price is allocated using the information currently available, and may be adjusted, up to one year from acquisition date, after obtaining more information regarding, among other things, asset valuations, liabilities assumed and revisions to preliminary estimates. The purchase price in excess of the fair value of the tangible and identified intangible assets acquired less liabilities assumed is recognized as goodwill.

The Company retains a valuation consulting firm to assist in testing for goodwill impairment in the fourth quarter of each year and whenever events or circumstances indicate that the carrying amount of an asset exceeds its fair value and may not be recoverable. At December 31, 2021 we performed a quantitative assessment of goodwill. It was determined that the remaining carrying of goodwill resulting from the acquisitions made in 2014 and 2015 exceeded their fair value and we recorded an impairment of \$5,464 for the remaining balances.

Early in 2020, as a result of the events and circumstances resulting from the COVID-19 pandemic, the Company's outlook for revenue, profitability and cash flow had deteriorated. Therefore, the Company performed a quantitative assessment of goodwill at March 31, 2020. It was determined that the carrying value of goodwill exceeded its fair value at March 31, 2020. As a result, the Company recorded an impairment of \$4,000. In accordance with the Company's policies, the Company performed a quantitative assessment of goodwill at December 31, 2020 and no impairment was found.

Fair Value of Financial Instruments

Disclosures about fair value of financial instruments, requires disclosure of the fair value information, whether or not recognized in the balance sheet, where it is practicable to estimate that value. As of December 31, 2021, the amounts reported for cash, accrued interest and other expenses, approximate the fair value because of their short maturities.

The Company accounts for financial instruments measured as fair value on a recurring basis under ASC Topic 820. ASC Topic 820 defines fair value, established a framework for measuring fair value in accordance with accounting principles generally accepted in the United States and expands disclosures about fair value measurements.

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. ASC Topic 820 established a three-tier fair value hierarchy which prioritizes the inputs used in measuring fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1 measurements) and the lowest priority to unobservable inputs (level 3 measurements). These tiers include:

- Level 1, defined as observable inputs such as quoted prices for identical instruments in active markets;
- Level 2, defined as inputs other than quoted prices in active markets that are either directly or indirectly observable such as quoted prices for similar instruments in active markets or quoted prices for identical or similar instruments in markets that are not active; and
- Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions, such as valuations derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable.

Income Taxes

The Company uses the liability method of accounting for income taxes. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to consolidated financial statements carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carry-forwards. The measurement of deferred tax assets and liabilities is based on provisions of applicable tax law. The measurement of deferred tax assets is reduced, if necessary, by a valuation allowance based on the amount of tax benefits that, based on available evidence, is not expected to be realized.

Segment Reporting

Operating segments are defined as components of an enterprise for which separate financial information is available and evaluated regularly by the chief operating decision maker, or decision-making group, in deciding the method to allocate resources and assess performance. The Company currently has two reportable segments. The Solcius segment focuses on residential projects. The Sunworks segment focuses on commercial projects. For financial reporting purposes residential and commercial operations represent the Company's two core businesses.

New Accounting Pronouncements

Management reviewed currently issued pronouncements during the year ended December 31, 2021, and believes that any other recently issued, but not yet effective, accounting standards, if currently adopted, would not have a material effect on the accompanying consolidated financial statements.

3. BUSINESS ACQUISITION

On April 8, 2021, pursuant to the Purchase Agreement, the Company, through its operating subsidiary Sunworks United Inc. acquired all of the issued and outstanding membership interests of Solcius from the Seller. Located in Provo, Utah, Solcius is a full-service residential solar systems provider.

The purchase price for Solcius consisted of \$51,750 in cash subject to post-closing adjustments related to working capital, cash, indebtedness and transaction expenses. The Acquisition was accounted for under ASC 805 and the financial results of Solcius have been included in the Company's consolidated financial statements since the date of the Acquisition.

Purchase Price Allocation

Under the purchase method of accounting, the transaction was valued for accounting purposes at \$52,111 which was the fair value of Solcius at the time of acquisition. The assets and liabilities of Solcius were recorded at their respective fair values as of the date of acquisition. The Company utilized the services of a valuation specialist to assist in identifying \$15,600 of separately identifiable intangible assets. Any difference between the cost of Solcius and the fair value of the assets acquired and liabilities assumed is recorded as goodwill. The acquisition date estimated fair value of the consideration transferred consisted of the following:

	(in thousands)
Base purchase price	\$ 51,750
Working capital shortfall	(1,131)
Cash surplus	1,492
Total purchase price paid	<u>\$ 52,111</u>
Cash	\$ 1,492
Accounts receivable	1,729
Inventory	3,833
Contract assets	7,336
Prepays and other current assets	1,603
Property and equipment	143
Deposits	91
Operating lease right-of-use asset	1,885
Finance lease right-of-use assets	1,200
Other intangible assets	15,600
Identifiable assets acquired	<u>34,912</u>
Accounts payable and accrued liabilities	(6,957)
Contract liabilities	(5,273)
Operating and finance lease liabilities	(2,757)
Liabilities assumed	(14,987)
Net identifiable assets acquired	<u>19,925</u>
Goodwill	32,186
Net assets acquired	<u>\$ 52,111</u>

During the year ended December 31, 2021, we recorded total transaction costs related to the Acquisition of \$774. These expenses were accounted for separately from the net assets acquired and are included in general and administrative expense.

We will continue to conduct assessments of the net assets acquired and recognized amounts for identifiable assets acquired and liabilities assumed at their estimated acquisition date fair values. We expect that it may take into the second quarter of 2022 until all post-closing assessments and adjustments are finalized.

Pro Forma Information (Unaudited)

The results of operations for the Acquisition since the April 8, 2021 closing date have been included in our December 31, 2021 consolidated financial statements and include approximately \$72,279 of total revenue. The following unaudited pro forma financial information represents a summary of the consolidated results of operations for the years ended December 31, 2021 and 2020, assuming the acquisition had been completed as of January 1, 2020. The pro forma financial information includes certain non-recurring pro forma adjustments that were directly attributable to the business combination. The proforma adjustments include the elimination of Acquisition transaction expenses totaling \$774 incurred in 2021, and adjustments to recognize amortization of intangible assets, retention stock-based compensation programs and retention bonus accruals in 2020. The retention bonus expense is recognized over the first year following the Acquisition. The pro forma financial information is not necessarily indicative of the results of operations that would have been achieved if the acquisition had been effective as of these dates, or of future results.

	Year ended	
	December 31, 2021	December 31, 2020
Revenue, net	\$ 127,304	\$ 131,377
Net Loss	\$ (20,304)	\$ (19,858)

4. REVENUE FROM CONTRACTS WITH CUSTOMERS

The following table represents a disaggregation of revenue by customer type from contracts with customers for the years ended December 31, 2021 and 2020:

	Year Ended December 31,	
	2021	2020
Residential	\$ 77,861	\$ 9,685
Commercial	17,125	18,771
Public Works	6,168	9,457
Total	\$ 101,154	\$ 37,913

Contract assets represent revenues recognized in excess of amounts invoiced on contracts in progress. Contract liabilities represent billings in excess of revenues recognized on contracts in progress. At December 31, 2021 and 2020, the contract asset balances were \$14,498 and \$2,397, and the contract liability balances were \$12,201 and \$6,260, respectively.

5. OPERATING SEGMENTS

The acquisition of Solcius was completed in April 2021. Solcius is a separate segment for management reporting purposes. Segment net revenue, segment operating expenses and segment contribution (loss) information consisted of the following for the year ended December 31, 2021.

	For the Year Ended December 31, 2021		
	Solcius	Sunworks	Total
Net revenue	\$ 72,278	\$ 28,876	\$ 101,154
Cost of sales	32,319	24,188	56,507
Gross profit	39,959	4,688	44,647
Operating expenses			
Selling and marketing	28,489	4,271	32,760
General and administrative	12,501	13,535	26,036
Segment contribution (loss)	(1,031)	(13,118)	(14,149)
Goodwill impairment	-	5,464	5,464
Stock-based compensation	2,725	1,009	3,734
Depreciation and amortization	5,647	230	5,877
Operating income (loss)	\$ (9,403)	\$ (19,821)	\$ (29,224)

6. PROPERTY AND EQUIPMENT, NET

Property and equipment is summarized as follows at December 31, 2021 and 2020:

	2021	2020
Leasehold improvements	\$ 442	\$ 419
Vehicles & trailers	723	221
Machinery & equipment	778	713
Office equipment & furniture	439	364
Computers & software	3,552	120
	5,934	1,837
Less accumulated depreciation	(2,739)	(1,639)
	<u>\$ 3,195</u>	<u>\$ 198</u>

7. RIGHT-OF-USE OPERATING LEASES

The Company has ROU operating leases for offices, warehouses, vehicles, and office equipment. The Company's leases have remaining lease terms of 1 year to 5 years, some of which include options to extend.

The Company's operating lease expense for the years ended December 31, 2021 and 2020 amounted to \$1,452 and \$1,016, respectively. Operating lease payments, which reduced operating cash flows for the years ended December 31, 2021 and 2020 amounted to \$1,452 and \$1,016, respectively. The difference between the ROU asset amortization of \$1,066 and the associated lease expense of \$1,452 consists of early cancellation of a facility lease obligation, new facility leases, short-term leases excluded from the ROU asset calculation, basic operating lease expenses included in the lease expense for property and sales taxes, triple net and common area charges for facilities and other equipment and vehicle lease related charges.

Supplemental balance sheet information related to leases is as follows:

	Year Ended December 31, (in thousands)	
	2021	2020
Operating lease right-of-use assets	\$ 2,502	\$ 694
Operating lease liabilities—short term	993	649
Operating lease liabilities—long term	1,509	45
Total operating lease liabilities	<u>\$ 2,502</u>	<u>\$ 694</u>

As of December 31, 2021, the weighted average remaining lease term was 3.5 years and the weighted average discount rate for the Company's leases was 3.3%.

Minimum payments for the operating leases are as follows:

	Operating Leases (in thousands)	
2022	\$	1,041
2023		688
2024		312
2025		294
2026		270
Thereafter		-
Total lease payments	\$	2,605
Less: imputed interest		103
Total	<u>\$</u>	<u>2,502</u>

8. RIGHT-OF-USE FINANCE LEASES

The Company has finance leases for vehicles. The Company's finance leases have remaining lease terms of 1 year to 5 years.

Supplemental balance sheet information related to finance leases is as follows:

	December 31, 2021	
	(in thousands)	
Finance lease right-of-use asset cost	\$	1,868
Finance lease right-of-use accumulated amortization		(461)
Finance lease right of use asset, net	\$	<u>1,407</u>
Finance lease obligation—short term	\$	424
Finance lease obligation—long term		542
Total finance lease obligation	\$	<u>966</u>

As of December 31, 2021, the weighted average remaining lease term was 2.4 years and the weighted average discount rate for the Company's leases was 4.4%.

Minimum finance lease payments for the remaining lease terms are as follows:

	December 31, 2021	
	(in thousands)	
2022	\$	458
2023		283
2024		149
2025		120
2026		14
Thereafter		-
Total lease payments	\$	<u>1,024</u>
Less: imputed interest		58
Total	\$	<u>966</u>

9. INTANGIBLE ASSETS, NET

The Company's intangible assets at December 31, 2021 consist of the following:

	Amortization periods	Cost	Accumulated amortization	Net carrying value
Trademarks	10 Years	\$ 5,200	\$ (390)	\$ 4,810
Backlog of projects	9 Months	2,000	(2,000)	-
Covenant not-to-compete	3 Years	2,400	(600)	1,800
Software (included in property and equipment)	3 Years	3,400	(850)	2,550
Dealer relationships	18 Months	2,600	(1,300)	1,300
		<u>\$ 15,600</u>	<u>\$ (5,140)</u>	<u>\$ 10,460</u>

Intangible assets are stated at their original estimated value at the date of acquisition. The amortization of intangible assets commences upon acquisition. The intangible assets are being amortized using the straight-line method over the intangible asset's estimated useful life:

Amortization expenses for intangible assets for the year ended December 31, 2021 was as follows:

	For the Year ended December 31, 2021
Trademarks	\$ 390
Backlog of projects	2,000
Covenant not-to-compete	600
Software	850
Dealer relationships	1,300
	<u>\$ 5,140</u>

Estimated future amortization expense for the Company's intangible assets as of December 31, 2021 is as follows:

Years ending December 31,	
2022	\$ 3,753
2023	\$ 2,453
2024	\$ 1,004
2025	\$ 520
2026	\$ 520
Thereafter	\$ 2,210

Depreciation and amortization expense on property and equipment and intangible assets for the years ended December 31, 2021 and 2020 was \$5,877 and \$337, respectively.

10. ACCOUNTS PAYABLE AND ACCRUED LIABILITIES

Accounts payable and accrued liabilities at December 31, 2021 and 2020 are as follows:

	2021	2020
Trade payables	\$ 3,929	\$ 3,780
Accrued payroll, vacation and payroll taxes	3,132	798
Accrued expenses, bonus and commissions	4,066	2,778
Total	<u>\$ 11,127</u>	<u>\$ 7,356</u>

11. ACQUISITION PROMISSORY NOTE

On February 28, 2015, the Company issued a 4% convertible promissory note in the aggregate principal amount of \$2,650 as part of the consideration paid to acquire 100% of the total outstanding stock of MD Energy. The note was convertible into shares of common stock on or after each of the following dates: November 30, 2015, November 30, 2016 and November 30, 2017. The conversion price was \$18.20 per share and a beneficial conversion feature of \$3,262 was calculated but capped at the \$2,650 value of the note. This convertible promissory note was paid in full on February 28, 2020, the maturity date. The Company recorded interest expense of \$3 during the year ended December 31, 2020. The outstanding balance at December 31, 2020 was \$0.

12. PROMISSORY NOTES PAYABLE

On April 27, 2018, the Company entered into a Loan Agreement (the “Loan Agreement”) with CrowdOut Capital, Inc. (“CrowdOut”) pursuant to which the Company issued an aggregate of \$3,750 in promissory notes (the “Notes”), of which \$3,000 was a Senior Note and \$750 were Subordinated Notes. The Subordinated Notes were funded by the Company’s then Chief Executive Officer, Charles Cargile, and the Company’s then President of Commercial Operations, Kirk Short.

The Notes bore interest at the rate of the one-month LIBOR plus 950 basis points and were scheduled to mature January 31, 2021 as amended.

The Notes could be prepaid in whole without the consent of the lender or in part with the consent of the lender. At the time the Notes were paid in full, the Company paid CrowdOut, as the holder of the Senior Note, an exit fee of \$435. The Company accrued the exit fee of \$435 over the remaining life of the Loan Agreement and recognized the exit fee as interest expense. For the year ended December 31, 2020 the exit fee recorded as interest expense was \$141.

On January 28, 2020, the Company entered into a second amendment to its Loan Agreement pursuant to which the Loan Agreement was amended to permit the partial prepayment of One Million Five Hundred Thousand Dollars \$(1,500) of the Senior Note loan amount without any prepayment fees. Accordingly, in January 2020, \$1,500 of the \$3,000 Senior Note was paid.

The Company recorded amortization of debt issuance costs of \$266 as interest expense during the year ended December 31, 2020.

On December 4, 2020, the Company paid the remaining outstanding balance of the \$1,500 Senior Note and \$750 of Subordinated Notes together with the \$435 exit fee. No balance or obligations remain outstanding as of December 31, 2020.

13. PAYCHECK PROTECTION PROGRAM LOAN PAYABLE

On April 28, 2020 the Company's operating subsidiary, Sunworks United, received a loan under the Paycheck Protection Program ("PPP"), which was established by the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), of \$2,847. As modified by the subsequent PPP Flexibility Act of 2020, proceeds from the loan were used to cover documented expenses related to payroll, rent and utilities, during the 24-week period after the cash was received by the Company. The 24-week period ended on October 12, 2020. The loan was accounted for as a financial liability in accordance with FASB ASC 470 until June 29, 2021 when the \$2,847 loan, together with \$34 of accrued interest, was fully forgiven. As a result, the Company recorded a gain on extinguishment of the debt which is included in other income on the consolidated statement of operations for the year ended December 31, 2021.

14. CAPITAL STOCK

Preferred Stock

Pursuant to the terms of our Charter, our board of directors is authorized, subject to limitations prescribed by Delaware law, to issue up to 5,000,000 shares of preferred stock, par value \$0.001 per share, in one or more series, to establish from time to time the number of shares to be included in each series, and to fix the designation, powers, preferences and rights of the shares of each series and any of its qualifications, limitations or restrictions, in each case without further action by our stockholders.

On January 9, 2015, we filed two Certificates of Designations, Preferences, and Rights, for Series A Preferred Stock and Series B Preferred Stock with the Secretary of State of the State of Delaware, or the Certificates of Designations, establishing the rights, preferences, privileges, qualifications, restrictions and limitations relating to 4,400 shares of our Series A Convertible Preferred Stock, par value \$0.001 per share, and 1,700,000 shares of our Series B Preferred Stock, par value \$0.001 per share. As of December 31, 2021 and 2020, there were no shares of our preferred stock outstanding.

Common Stock

As approved by stockholders during the 2020 annual meeting on September 18, 2020, a Certificate of Amendment of the Certificate of Incorporation was filed with the Secretary of State of the State of Delaware to reduce the total number of shares of all classes of capital stock of the Company to fifty-five million (55,000,000) shares, consisting of fifty million (50,000,000) shares of common stock, par value \$0.001 per share and five million (5,000,000) shares of preferred stock, par value \$0.001 per share.

Year ended December 31, 2021

Registration Statement

On January 27, 2021, the Company filed a Registration Statement on Form S-3 (File No. 333-252475) (the "Registration Statement") with the Securities and Exchange Commission (the "SEC"). The Registration Statement allows the Company to offer and sell, from time to time in one or more offerings, any combination of common stock, preferred stock, warrants, or units having an aggregate initial offering price not to exceed \$100 million. The Registration Statement was declared effective by the SEC on February 3, 2021.

First Sales Agreement

On February 10, 2021, the Company entered into a Sales Agreement (the “Roth Sales Agreement”) with Roth Capital Partners, LLC (the “Agent RCP”), pursuant to which the Company could offer and sell from time to time, through the Agent RCP, shares of the Company’s common stock, registered under the Securities Act, pursuant to the Registration Statement filed on Form S-3.

Sales of shares pursuant to the Roth Sales Agreement are deemed to be “at the market offerings” as defined in Rule 415 promulgated under the Securities Act. The Agent RCP has agreed to act as sales agent and use commercially reasonable efforts to sell on the Company’s behalf all of the shares requested to be sold by the Company, consistent with its normal trading and sales practices, on mutually agreed terms between the Agent RCP and the Company.

3,212,486 shares of common stock (the “Placement Shares”) were sold under the Roth Sales Agreement between February 11, 2021 and February 23, 2021, pursuant to a prospectus supplement that was filed with the SEC on February 10, 2021. Total gross proceeds for the Placement Shares were \$49,937 or \$15.54 per share. Net proceeds after brokerage costs, professional, registration and other fees were \$48,858 or \$15.21 per share.

Second Sales Agreement

On October 21, 2021, the Company filed a prospectus supplement with the SEC, pursuant to which the Company could offer and sell from time to time, through the Agent RCP, shares of the Company’s common stock, registered under the Securities Act, pursuant to the Registration Statement.

In accordance with the terms of the Roth Sales Agreement, we may offer and sell shares of our common stock under this prospectus having an aggregate offering price of up to \$25 million (the “New Placement Shares”) from time to time through or to Agent RCP, as sales agent or principal.

Sales of shares pursuant to the Roth Sales Agreement are deemed to be “at the market offerings” as defined in Rule 415 promulgated under the Securities Act. The Agent RCP has agreed to act as sales agent and use commercially reasonable efforts to sell on the Company’s behalf all of the shares requested to be sold by the Company, consistent with its normal trading and sales practices, on mutually agreed terms between the Agent RCP and the Company.

2,144,498 shares of common stock were sold under the Roth Sales Agreement between October 27, 2021 and November 19, 2021, pursuant to a prospectus supplement that was filed with the SEC on October 21, 2021. Total gross proceeds for the New Placement Shares were \$13,130 or \$6.12 per share. Net proceeds after brokerage costs, professional, registration and other fees were \$12,742 or \$5.94 per share.

Year ended December 31, 2020

\$15 Million Prospectus Supplement Continuation From - June 6, 2019

Pursuant to a June 6, 2019 At Market Issuance Sales Agreement (the “First ATM Agreement”) with B. Riley Securities (the “Agent”), the Company offered and sold shares of the Company’s common stock, par value \$0.001 per share, registered under the Securities Act of 1933, as amended (the “Securities Act”), pursuant to the Registration Statement (the “Prior Registration Statement”) on Form S-3 (File No. 333-231653), which was originally filed with the Securities and Exchange Commission (“SEC”) on May 21, 2019 and declared effective by the SEC on May 31, 2019. The base prospectus was contained within the Prior Registration Statement. The Prior Registration Statement allowed the Company to offer and sell, from time to time in one or more offerings, any combination of common stock, preferred stock, warrants, or units having an aggregate initial offering price not to exceed \$50 million. As of December 31, 2020, all of the shares of common stock registered under the Prior Registration Statement had been sold.

Sales of shares under the First ATM Agreement were deemed to be “at the market offerings” as defined in Rule 415 promulgated under the Securities Act. The Agent acted as sales agent and used commercially reasonable efforts to sell on the Company’s behalf all of the First Placement Shares requested to be sold by the Company, consistent with its normal trading and sales practices, on mutually agreed terms between the Agent and the Company.

9,817,343 shares of common stock (the “First Placement Shares”) were sold under the First ATM Agreement between January 1, 2020 and March 26, 2020, pursuant to a prospectus supplement that was filed with the SEC on June 6, 2019. Total gross proceeds for the shares were \$7,976 or \$0.812 per share. Net proceeds after issuance costs were \$7,736 or \$0.788 per share. With the sale of the First Placement Shares during the first three months of 2020, the Company had sold the maximum amount allowed under its prospectus supplement and no further First Placement Shares under the First ATM Agreement could be sold without the Company filing an additional prospectus supplement with the SEC. The Prior Registration Statement was filed in reliance on Instruction I.B.6. of Form S-3, which imposes a limitation on the maximum amount of securities that the Company could sell pursuant to the Prior Registration Statement during any twelve-month period. At the time the Company sold the First Placement Shares pursuant to the Prior Registration Statement, the amount of securities to be sold plus the amount of any securities the Company had sold during the prior twelve months in reliance on Instruction I.B.6. could not exceed one-third of the aggregate market value of the Company’s outstanding common stock held by non-affiliates as of a day during the 60 days immediately preceding such sale as computed in accordance with Instruction I.B.6. Therefore, the Company was not eligible to sell additional shares under the Prior Registration Statement at that time.

\$20 Million Prospectus Supplement – November 25, 2020

3,877,746 shares of common stock (the “Second Placement Shares”) were sold under the First ATM Agreement between November 25, 2020 and December 2, 2020, pursuant to a prospectus supplement that was filed with the SEC on November 25, 2020. Total gross proceeds for the Second Placement Shares were \$19,990, or an average of \$5.16 per share. Net proceeds after issuance costs were \$19,468, or an average of \$5.02 per share.

\$14.6 Million Prospectus Supplement – December 18, 2020

3,314,596 shares of common stock (the “Third Placement Shares”) were sold under the First ATM Agreement between December 21, 2020 and December 22, 2020, pursuant to a prospectus supplement that was filed with the SEC on December 18, 2020. Total gross proceeds for the shares were \$14,590, or an average of \$4.40 per share. Net proceeds after issuance costs were \$14,202, or an average of \$4.28 per share.

Restricted Stock

During the first three months of the year 2020, the terms of a March 2017 restricted stock grant agreement were completed with the issuance of 5,952 shares of common stock to the Company’s then Chairman and former Chief Executive Officer, Charles Cargile.

15. STOCK OPTIONS, RESTRICTED STOCK UNITS

Options

As of December 31, 2021, the Company has incentive stock options and non-qualified stock options outstanding to purchase 290,684 shares of common stock, per the terms set forth in the option agreements. The stock options vest at various times and are exercisable for a period of five years from the date of grant at exercise prices ranging from \$2.10 to \$12.15 per share, the market value of the Company’s common stock on the date of each grant. The Company determined the fair market value of these options by using the Black Scholes option valuation model. Option forfeitures are accounted for as they occur.

On April 12, 2021, subject to the 2016 Plan, the Company granted eight members of Solcius management incentive stock options for a total of 260,000 shares of common stock. The entire 260,000 options vest on April 8, 2022, the one-year anniversary date of the Solcius acquisition. The exercise price of each option share is \$12.15, the closing price of Sunworks stock on April 12, 2021. The Company determined the fair market value of these options at \$10.30 per share by using the Black Scholes option valuation model. The annualized volatility is 126.0 percent with an annual risk-free interest rate of 1.69 percent. The options mature and expire in five years from date of grant.

During 2021, using cashless option exercises, 2,218 options were exercised resulting in 1,530 net shares being issued.

A summary of the Company’s stock option activity and related information follows:

	2021		2020	
	Number of Options	Weighted Average Exercise Price	Number of Options	Weighted Average Exercise Price
Outstanding, beginning January 1	88,441	\$ 11.02	143,623	\$ 8.99
Granted	260,000	12.15	-	-
Exercised	(2,218)	2.10	(26,116)	2.66
Forfeited	(29,113)	7.38	(29,066)	8.53
Expired	(26,426)	19.93	-	-
Outstanding, and expected to vest as of December 31	290,684	\$ 11.65	88,441	\$ 11.02
Exercisable at the end of December 31	28,042	\$ 7.88	71,502	\$ 12.81
Weighted average fair value of options granted during period		\$ 12.15		\$ -

The following summarizes the options to purchase shares of the Company's common stock which were outstanding at December 31, 2021:

Exercisable Prices	Stock Options Outstanding	Stock Options Exercisable	Weighted Average Remaining Contractual Life (years)
\$ 10.50	9,998	9,998	0.38
\$ 8.68	7,142	7,142	1.37
\$ 7.63	4,999	4,999	1.41
\$ 2.10	1,109	853	2.01
\$ 3.07	3,071	2,475	2.62
\$ 2.52	4,365	2,575	2.75
\$ 12.15	260,000	-	4.28
	<u>290,684</u>	<u>28,042</u>	

Aggregate intrinsic value of options outstanding and exercisable at December 31, 2021 and 2020 was \$2 and \$5, respectively. Aggregate intrinsic value represents the difference between the Company's closing stock price on the last trading day of the fiscal period, which was \$3.07 and \$5.12 as of December 31, 2021 and 2020, respectively, and the exercise price multiplied by the number of options outstanding.

The Company recorded stock-based compensation for stock options of \$2,027 and \$84 for the years ended December 31, 2021 and 2020, respectively.

Restricted Stock Units

The following table summarizes the Company's restricted stock unit activity during the year ended December 31, 2021:

	December 31, 2021	
	Number Of Shares	Weighted Average Grant Date Value per Share
Unvested, beginning December 31, 2020	-	\$ -
Granted	1,195,889	\$ 5.14
Vested	(10,000)	\$ 9.07
Forfeited	-	\$ -
Unvested at the end of December 31, 2021	<u>1,185,889</u>	<u>\$ 5.11</u>

RSUs granted during the year ended December 31, 2021 vest in a variety of ways. Some RSU's vest on the one-year anniversary of the date of grant. Other RSU's vest one-third on the one-year anniversary date of the grant and then monthly over the next 24 months. Other RSU's vest one-third on each annual anniversary date for the next three years. Another portion of the RSUs are performance based and vest on achieving certain revenue and cash flow and profitability goals measured annually or in some cases for the year 2024.

The total combined stock option, RSU compensation and restricted stock expense recognized in the consolidated statements of operations during the years ended December 31, 2021 and 2020 was \$3,734 and \$147, respectively.

Warrants

As part of a March 2015 capital raise, the Company issued common stock with warrants to purchase 428,572 shares of common stock at an exercise price of \$29.05 per share. During 2015, 429 warrants were exercised. No additional warrants were ever exercised after 2015. The warrants expired on March 9, 2020.

The sales and issuances of common stock pursuant to various ATM agreements in 2019 and 2020 described in Note 14 triggered the down round provision in the warrants resulting in the Company recording a deemed dividend of approximately \$60 in the year ended December 31, 2020.

Pursuant to the down round provisions of the warrants, the exercise price decreased from \$29.05 to \$1.20 at December 31, 2019. In 2020, continued common stock issuances caused the exercise price to decrease from \$1.20 to \$0.65 until on March 9, 2020, when the warrants expired unexercised.

The deemed dividend has no cash impact. For financial statement presentation purposes, the deemed dividend is shown as an increase in the net loss attributable to common shareholders, increasing the loss per share for common stock by approximately \$0.01 per common share for the year ended December 31, 2020.

16. INCOME TAXES

The Company is recording an income tax expense for state franchise and minimum taxes only, due to operating losses incurred for the years ended December 31, 2021 and 2020. State franchise and minimum taxes are included in general and administrative expense. The Company accounts for income taxes in accordance with ASC 740, which requires that the tax benefit of net operating losses, temporary differences and credit carryforwards be recorded as an asset to the extent that management assesses that realization is "more likely than not." Realization of the future tax benefits is dependent on the Company's ability to generate sufficient taxable income within the carryforward period. No tax benefit has been reported in the 2021 consolidated financial statements, since the potential tax benefit is offset by a valuation allowance of the same amount.

The Company's income tax expense for the years ended December 31, 2021 and 2020 are summarized below:

	December 31, 2021	December 31, 2020
Current:		
Federal	\$ -	\$ -
State	75	-
Total current expense	<u>\$ 75</u>	<u>\$ -</u>
Deferred:		
Federal	\$ (4,238)	\$ (2,863)
State	(1,353)	(599)
Change in valuation allowance	5,591	3,462
Total deferred	<u>\$ -</u>	<u>\$ -</u>
Income tax provision (benefit)	<u>\$ 75</u>	<u>\$ -</u>

Deferred tax assets and liabilities reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets are as follows:

	December 31, 2021	December 31, 2020
Deferred tax assets:		
Warranty, inventory and bad debt reserves	\$ 464	\$ 462
Other accrued expenses	228	-
Other	28	86
Property and equipment	39	94
Intangible assets	707	-
Deferred stock-based compensation	445	84
Limitation under 163(j)	440	579
Research and development credits	232	248
Net operating loss	12,830	8,270
Total deferred tax assets	<u>15,413</u>	<u>9,823</u>
Valuation allowances	<u>(15,413)</u>	<u>(9,823)</u>
Net deferred tax assets	<u>\$ -</u>	<u>\$ -</u>

A reconciliation of income taxes computed by applying the statutory U.S. income tax rate to the Company's loss before income tax provision is as follows:

	2021	2020
U.S Federal statutory tax rate	21.00%	21.00%
State tax benefit, net	-1.08%	-%
Research and development credits	-%	-%
Stock-based compensation	-1.59%	-0.19%
Impairment of goodwill	-4.31%	-5.27%
PPP Loan forgiveness	2.27%	-%
Other	-0.07%	-%
Valuation allowance	-16.50%	-15.54%
Effective income tax rate	-0.28%	-%

At December 31, 2021, the Company had federal and state net operating loss carryforwards of approximately \$48.0 million and \$46.8 million, respectively. In addition, the Company has federal and California research and development tax credit carryforwards of approximately \$173 and \$75, respectively. The federal net operating losses incurred in years beginning after January 1, 2018 in the amount of \$36.0 million can be carried forward indefinitely. The remaining \$11.8 million of federal net operating loss, research tax credit carryforwards and California net operating loss carryforwards will begin to expire in 2029 unless previously utilized. The California research and development credit carryforwards will carry forward indefinitely until utilized.

Utilization of U.S. net operating losses and tax credit carryforwards may be limited by "ownership change" rules, as defined in Sections 382 and 383 of the Code. Similar rules may apply under state tax laws. The Company has not conducted a study to-date to assess whether a limitation would apply under Sections 382 and 383 of the Code as and when it starts utilizing its net operating losses and tax credits. The Company will continue to monitor activities in the future. In the event the Company should experience an ownership change in the future, the amount of net operating losses and research and development credit carryovers available in any taxable year could be limited and may expire unutilized.

The CARES Act was signed into law on March 27, 2020 as a response to the economic challenges facing U.S. businesses caused by the COVID-19 global pandemic. The CARES Act allowed net operating loss incurred in 2018-2020 to be carried back five years or carried forward indefinitely, and to be fully utilized without being subjected to the 80% taxable income limitation. Net operating losses incurred after December 31, 2020 will be subjected to the 80% taxable income limitation. In assessing the realization of deferred tax assets, management considers whether it is more likely than not that some portion, or all, of the deferred tax asset will be realized. The ultimate realization of deferred tax assets is dependent upon the Company attaining future taxable income during periods in which those temporary differences become deductible.

Due to the uncertainty surrounding the realization of the benefits of its deferred assets, including NOL carryforwards, the Company has provided a 100% valuation allowance on its deferred tax assets at December 31, 2021 and 2020, respectively.

The Company accounts for uncertain tax positions in accordance with the provisions of ASC 740, *Income Taxes*. When uncertain tax positions exist, the Company recognizes the tax benefit of tax positions to the extent that the benefit will more likely than not be realized. The determination as to whether the tax benefit will more likely than not be realized is based upon the technical merits of the tax position as well as consideration of the available facts and circumstances. As of December 31, 2021, the Company had no uncertain tax positions for the years ended December 31, 2021 and 2020.

As part of the acquisition of Solcius a portion of the purchase price was assigned to goodwill and other intangibles. The transaction was taxable for income tax purposes and all assets and liabilities have been recorded at fair value for both book and income tax purposes. Therefore, no deferred tax asset differences between book and tax were originally recorded as part of the purchase price allocation.

17. COMMITMENTS AND CONTINGENCIES

Litigation

From time to time, the Company is involved in routine litigation that arises in the ordinary course of business. There are no pending significant legal proceedings to which the Company is a party for which management believes the ultimate outcome would have a negative impact on the Company's financial position.

18. MAJOR CUSTOMER/SUPPLIERS

The Company utilizes a network of authorized dealers to source sales for its residential operations. For the year ended December 31, 2021, the three largest authorized dealers were responsible for approximately 56% of our consolidated revenue. For 2020, all authorized dealers combined accounted for approximately 26% of consolidated revenue.

For the years ended December 31, 2021 and 2020 the Company had no projects that represented more than 10% of revenue.

As of December 31, 2021 the Company had a receivable balance from one customer for approximately \$572 which was approximately 13% of the consolidated accounts receivable balance. As of December 31, 2020 no customer receivable balance was greater than 10% of the consolidated accounts receivable balance.

For the year ended December 31, 2021 we had two vendors that combined accounted for 45.1% of our cost of goods sold. For the year ended December 31, 2020 we had one vendor that accounted for 11.6% of our cost of goods sold.

19. RELATED PARTY TRANSACTIONS

The Company rents a facility in Durham, California from its former President of Commercial Operations, for \$11 per month for a total cost of \$112 and \$108 for 2021 and 2020, respectively.

20. SUBSEQUENT EVENTS

Subsequent to December 31, 2021 through March 11, 2022, there were no events, not otherwise described in these consolidated financial statements, requiring disclosure here.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

We carried out an evaluation, under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, of the effectiveness of our disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)). Based upon that evaluation, our principal executive officer and principal financial officer concluded that, as of the end of the period covered in this report, our disclosure controls and procedures were effective to ensure that information required to be disclosed in reports we file or submit under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the required time periods specified in the Commission's rules and forms and is accumulated and communicated to our management, including our principal executive officer and principal financial officer or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

Limitations on the Effectiveness of Controls

Our management, including our principal executive officer and principal financial officer, do not expect that our disclosure controls and procedures or our internal controls will prevent all errors or fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints and the benefits of controls must be considered relative to their costs. Due to the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934, as amended. Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2021. In making this assessment, our management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in Internal Control-Integrated Framework (2013).

Management believes that the controls currently in place are adequate and operated effectively based upon the criteria established in "Internal Control-Integrated Framework" issued by the COSO, management concluded that as of December 31, 2021, our internal controls over financial reporting are effective.

Changes in Internal Control Over Financial Reporting

There was no change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the year ended December 31, 2021 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

No Attestation Report by Independent Registered Accountant

The effectiveness of our internal control over financial reporting as of December 31, 2021 has not been audited by our independent registered public accounting firm by virtue of our exemption from such requirement as a smaller reporting company.

Item 9B. Other Information.

Not applicable.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

The information required by this Item will be included in our definitive Proxy Statement for the 2022 Annual Meeting of Stockholders and is incorporated herein by reference.

Item 11. Executive Compensation.

The information required by this Item will be included in our definitive Proxy Statement for the 2022 Annual Meeting of Stockholders and is incorporated herein by reference.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

The information required by this Item will be included in our definitive Proxy Statement for the 2022 Annual Meeting of Stockholders and is incorporated herein by reference.

Item 13. Certain Relationships and Related Transactions and Director Independence.

The information required by this Item will be included in our definitive Proxy Statement for the 2022 Annual Meeting of Stockholders and is incorporated herein by reference.

Item 14. Principal Accountant Fees and Services.

The information required by this Item will be included in our definitive Proxy Statement for the 2022 Annual Meeting of Stockholders and is incorporated herein by reference.

PART IV

Item 15. Exhibits, Financial Statement Schedules.

(1) Consolidated Financial Statements.

The consolidated financial statements required by item 15 are submitted in a separate section of this report, beginning on Page F-1, incorporated herein and made a part hereof.

(2) Financial Statement Schedules.

Schedules have been omitted because of the absence of conditions under which they are required or because the required information is included in the consolidated financial statements or notes thereto.

(3) Exhibits.

The following exhibits are filed with this report, or incorporated by reference as noted:

(a)

- 2.1 [Membership Interest Purchase Agreement, dated as of April 8, 2021, between Solcius Holdings, LLC and Sunworks United Inc. \(incorporated by reference to the Current Report of Form 8-K filed with the Securities and Exchange Commission on April 8, 2021\).](#)
- 3.1 [Amended and Restated Certificate of Incorporation. \(incorporated by reference to Exhibit 3.1 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 26, 2021\).](#)
- 3.2* [Bylaws of Sunworks, Inc. \(as Updated Through June 2, 2021\).](#)
- 4.1 [Description of Registrant's Capital Stock \(incorporated by reference from the annual report on Form 10-K for the year ended December 31, 2019 filed with the Securities and Exchange Commission on March 30, 2020\).](#)

- 10.1# [Sunworks, Inc. 2016 Equity Incentive Plan \(incorporated by reference to Schedule 14A filed with the Securities and Exchange Commission on May 18, 2016\).](#)
- 10.2*# [Form of Restricted Share Unit Agreement under the Sunworks, Inc. 2016 Equity Incentive Plan.](#)
- 10.3*# [Form of Stock Option Agreement under the Sunworks, Inc. 2016 Equity Incentive Plan.](#)
- 10.4# [Form of Director and Officer Indemnification Agreement \(incorporated by reference from the quarterly report on Form 10-Q filed with the Securities and Exchange Commission on October 31, 2019\).](#)
- 10.5 [Loan Agreement made April 25, 2020 between Sunworks United Inc. and Tri Counties Bank with U.S. Small Business Administration Guarantee \(incorporated by reference to the quarterly report on Form 10-Q filed with the Securities and Exchange Commission on August 10, 2020\).](#)
- 10.6 [U.S. Small Business Administration, Note and SBA Loan # 1319647201 between Sunworks United Inc. and Tri Counties Bank \(incorporated by reference to the quarterly report on Form 10-Q filed with the Securities and Exchange Commission on August 10, 2020\).](#)
- 10.7# [Employment Agreement effective as of January 11, 2021 between Sunworks, Inc. and Gaylon Morris \(incorporated by reference to the current report on Form 8-K filed with the Securities and Exchange Commission on January 13, 2021\).](#)
- 10.8*# [Amendment to the January 11, 2021 Employment Agreement between Sunworks, Inc. and Gaylon Morris.](#)
- 10.9# [Employment Agreement, dated October 5, 2021 between Sunworks, Inc. and Jason Bonfigt \(incorporated by reference to the current report on Form 8-K filed with the Securities and Exchange Commission on October 7, 2021\).](#)

- 14.1 [Sunworks, Inc. Code of Conduct, adopted May 2018 \(incorporated by reference to the current report filed on June 5, 2018\).](#)
- 23.1* [Consent of Independent Registered Public Accounting Firm](#)
- 31.1* [Certification of Principal Executive Officer](#)
- 31.2* [Certification of Principal Financial Officer](#)
- 32.1** [Section 1350 Certificate of President and Chief Financial Officer](#)

101.INS Inline XBRL Instance Document

101.SCH Inline XBRL Taxonomy Extension Schema Document

101.CAL Inline XBRL Taxonomy Extension Calculation Linkbase Document

101.DEF Inline XBRL Taxonomy Extension Definition Linkbase

101.LAB Inline XBRL Taxonomy Extension Labels Linkbase Document

101.PRE Inline XBRL Taxonomy Extension Presentation Linkbase Document

104 Cover Page Interactive Data File (embedded within the Inline XBRL document)

* Filed herewith.

Denotes management compensatory plan or arrangement.

** The certifications attached as Exhibit 32.1 accompany this Annual Report pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, and shall not be deemed “filed” by the registrant for purposes of Section 18 of the Exchange Act and are not to be incorporated by reference into any of the registrant’s filings under the Securities Act or the Exchange Act, irrespective of any general incorporation language contained in any such filing.

(b) Exhibits.

See (a)(3) above.

(c) Financial Statement Schedules.

See (a)(2) above.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

SUNWORKS, INC.

By: /s/ Gaylon Morris

Chief Executive Officer
Principal Executive Officer

By: /s/ Jason Bonfigt

Chief Financial Officer
Principal Financial and Accounting Officer

Date: March 11, 2022

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Judith Hall</u> Judith Hall	Chairperson	March 11, 2022
<u>/s/ Gaylon Morris</u> Gaylon Morris	Chief Executive Officer & Director (Principal Executive Officer)	March 11, 2022
<u>/s/ Jason Bonfigt</u> Jason Bonfigt	Chief Financial Officer (Principal Financial and Accounting Officer)	March 11, 2022
<u>/s/ Patrick McCullough</u> Patrick McCullough	Director	March 11, 2022
<u>/s/ Stanley Speer</u> Stanley Speer	Director	March 11, 2022
<u>/s/ Rhone Resch</u> Rhone Resch	Director	March 11, 2022

BYLAWS
OF
SUNWORKS, INC.
(As Updated Through June 2, 2021)

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**BYLAWS
OF
SUNWORKS, INC.**

1. NAME; EXECUTIVE OFFICES

1.1 Name of Corporation. The name of this Corporation is Sunworks, Inc.

1.2 Principal Office. The Board of Directors shall designate the location of the principal executive office of the Corporation, which may be at any place within or without the State of Delaware. If the principal executive office is located outside of Delaware, and if the Corporation has one or more business office, then the Board of Directors shall designate a principal business office.

1.3 Additional or New Offices. The Board of Directors may establish such branch or subordinate offices, or may relocate the Corporation's principal office from time to time, at or to such locations as it determines to be appropriate.

2. DEFINITIONS

For purposes of these Bylaws, the terms set forth below shall be used as they are defined in this Section.

2.1 Certificate of Incorporation. The term "Certificate of Incorporation" means the Certificate of Incorporation of the Corporation as filed with the Secretary of State of the State of Delaware and as in effect at the time in question.

2.2 Common Stock. The term "Common Stock" means the Common Stock of the Corporation as constituted as of the date in question, including each Series of Common Stock.

2.3 GCL. The term "GCL" means the Delaware General Corporation Law as in effect at the time in question.

2.4 Shares Entitled to Vote. If the Certificate of Incorporation provide for more or less than one vote for any share of capital stock on any matter, every reference in these Bylaws to a majority or other percentage or amount of the "Shares Entitled to Vote" shall mean a majority or other applicable percentage or amount of the total number of votes entitled to be cast with respect to the shares of capital stock which have the right to vote or act by written consent on such matter.

2.5 Voting Power. If the Certificate of Incorporation provide for more or less than one vote for any share of capital stock on any matter, every reference in these Bylaws to a majority or other percentage of the "Voting Power" shall mean a majority or other applicable percentage of the total number of votes entitled to be cast with respect to the shares of capital stock which have the right to vote or act by written consent on such matter.

3. MEETINGS OF THE SHAREHOLDERS

3.1 Place of Meeting. All meetings of the shareholders of this Corporation shall be held at the principal office of the Corporation in the State of California, or at such other place within or without the State as may be designated from time to time by the Board of Directors or as may be consented to in writing by all of the persons entitled to vote who were not present at the meeting.

3.2 Annual Meeting. The annual meeting of the stockholders of the Corporation, for the purpose of election of directors and for such other business as may properly come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors.

3.3 Special Meetings. Special meetings of the shareholders may be called in accordance with the procedures set forth in this Section 3.3 for the purpose of taking any action permitted to be taken by the shareholders under the GCL and the Certificate of Incorporation.

3.3.1 Authorization to Call Special Meetings. The Chairman of the Board, the President, the Board of Directors, any two or more members of the Board, or one or more shareholders holding not less than ten percent (10%) of the Voting Power of the Corporation, may call special meetings of the shareholders at any time.

3.3.2 Procedure for Calling Special Meetings. If a special meeting is called by any person other than the Board of Directors, the request for the special meeting, specifying the general nature of the business proposed to be transacted, shall be delivered personally or sent by registered mail or by telegraphic or other facsimile transmission to the President, the Chairman of the Board, any Vice-President or the Secretary of the Corporation. The officer receiving the request shall promptly cause notice of the meeting to be given in the manner provided by Section 3.4 of these Bylaws to the shareholders entitled to vote at the meeting. Any special meeting called for pursuant to this Section 3.3 shall be held not less than thirty-five (35) nor more than sixty (60) days following receipt of the request for the special meeting. If notice of the special meeting is not given to shareholders within twenty (20) days after the receipt of a request, the person(s) calling the meeting may give notice thereof in the manner provided by these Bylaws or apply to a court of competent jurisdiction as contemplated by the GCL.

3.4 Notice of Meetings. Notice of meetings, annual or special, shall be given in writing to each shareholder entitled to vote at such meeting by the Secretary or an Assistant Secretary, or if there be no such officers, by the Chairman of the Board or the President, or in the case of neglect or refusal, by any person entitled to call a meeting, not less than ten (10) days (or, if sent by third class mail, thirty (30) days) nor more than sixty (60) days before the date of the meeting.

3.4.1 Procedure for Giving Notice. Written notice of the meeting shall be given either personally or by first class mail (or third class mail if the Corporation has shares held of record by 500 or more persons as of the record date for the meeting) or telegraphic or other means of written communication, charges prepaid, addressed to the shareholder at the address of the shareholder appearing on the books of the Corporation or given by the shareholder to the Corporation for the purpose of notice. If no such address for notice appears on the Corporation's books or has not been given, notice shall be deemed to have been given if sent to the shareholder in care of the Corporation's principal executive office or if published at least once in a newspaper of general circulation in the county in which the principal executive office of the Corporation is located. The giving of notice as provided by these Bylaws may be omitted only to the extent and in the manner expressly permitted by the GCL.

3.4.2 Contents of Notice. Notice of any meeting of shareholders shall specify:

- A. The place, the date and the hour of the meeting;
- B. Those matters which the Board, at the time of the mailing of the notice, intends to present for action by the shareholders;
- C. If Directors are to be elected, the names of nominees whom, at the time of the notice, management intends to present for election;
- D. The general nature of any business to be transacted at a special meeting and that no other business shall be transacted;
- E. The general nature of business to be transacted at any meeting, whether regular, annual or special, if such business relates to any proposal to take action with respect to the approval of (1) a contract or other transaction with an interested Director, governed by the GCL, (2) an amendment of the Certificate of Incorporation, (3) the reorganization of the Corporation within the meaning of the GCL, (4) the voluntary dissolution of the Corporation, or (5) a plan of distribution in dissolution;
- F. Such other matters, if any, as may be expressly required by the GCL.

3.4.3 Waiver of Notice of Meetings. The transactions of any meeting of shareholders, however called and noticed, shall be as valid as action taken at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the persons entitled to vote, but who are not present in person or by proxy, signs a written waiver of notice or a consent to the holding of the meeting or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. A waiver of notice or a consent to the holding of any meeting of shareholders need not specify the business transacted at or the purpose of any regular or special meeting, other than any proposal approved or to be approved at such meeting, the general nature of which was required by paragraph E. of Section 3.4.2 of these Bylaws to be stated in the notice thereof.

3.5 Quorum Requirements. The holders of 33 1/3% of the Shares Entitled to Vote, represented in person or by proxy, shall constitute a quorum at all meetings of the shareholders for the transaction of business. The shareholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum.

3.6 Lack of Quorum; Adjournments. If a quorum is not present or represented at any meeting of the shareholders, the meeting may be adjourned by a majority vote of the Shares Entitled to Vote who are present, either in person or by proxy, until such time as the requisite number of voting shares constituting a quorum is present.

3.6.1 Conduct of Adjourned Meeting. Except as provided in Section 3.6.2 of these Bylaws, it shall not be necessary to give any notice of the adjourned meeting, other than by announcement of the time and place thereof at the meeting at which the adjournment is taken, and the Corporation may transact at the adjourned meeting any business which might have been transacted at the original meeting.

3.6.2 Notice of Adjourned Meeting. When a meeting is adjourned for more than forty-five (45) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given in accordance with the provisions of Section 3.4 of these Bylaws.

3.7 Voting Rights. Subject to the provisions of the GCL, only persons in whose names Shares Entitled to Vote stand on the stock records of the Corporation on the record date shall be entitled to vote at meetings of the shareholders.

3.7.1 General Voting Rights. Except as otherwise provided in the Certificate of Incorporation or Section 3.8, below, every shareholder entitled to vote shall be entitled to one vote for each share of stock entitled to vote held of record. If the Certificate of Incorporation provide for more or less than one vote for any share of stock on any matter, every reference in these Bylaws to a majority or other proportionate vote of the stock of the Corporation shall refer to such majority or proportionate vote of the Shares Entitled to Vote based on the aggregate number of votes entitled to be cast by such shares on such matter.

3.7.2 Majority Vote. Except as otherwise provided in the Certificate of Incorporation or Section 4.3, below, the affirmative vote of a majority of the shares represented at the meeting and entitled to vote on any matter shall be the act of the shareholders, unless the vote of a greater number of shares of stock or voting by classes is required by the GCL or by the Certificate of Incorporation.

3.7.3 Voice Voting; Written Ballots. Voting at meetings of the shareholders may be by voice vote or by ballot except that, in any election of Directors, voting must be by written ballot if voting by ballot is requested by any shareholder entitled to vote.

3.8 Voting by Proxy. Every shareholder entitled to vote, or to execute consents, may do so either in person, by telegram, or by written proxy in a form as provided in, and executed in accordance with the applicable provisions of the GCL. Proxies must be filed with the Secretary or an Assistant Secretary of the Corporation. The validity of a proxy tendered on behalf of a shareholder, and any revocation thereof, shall be determined in accordance with the provisions of the GCL.

3.9 Inspectors of Election. In advance of any meeting of shareholders, the Board of Directors may appoint any persons other than nominees for office to act as Inspectors of Election at such meeting or any adjournment thereof. If no Inspectors of Election are appointed or if an appointment is vacated by an Inspector who fails to appear or fails or refuses to act, the Chairman of any such meeting may, and on the request of any shareholder or his proxy shall, make such appointment or fill such vacancy at the meeting. The number of Inspectors shall be as prescribed by and shall have the authority and duties set forth in the GCL.

3.10 Shareholder Action without a Meeting. Unless otherwise provided in the Certificate of Incorporation, any action which may be taken at any annual or special meeting of the shareholders, other than the election of Directors, may be taken without a meeting and without prior notice if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shareholders entitled to vote thereon were present and voted.

3.10.1 Notice of Written Consent. Unless the consents of all shareholders entitled to vote have been solicited in writing, prompt notice of any corporate action approved by shareholders without a meeting by less than unanimous written consent shall be given to those shareholders entitled to vote who have not consented in writing. Such notice must be given at least ten (10) days before the consummation of any action authorized by such approval if the action involves (i) a contract or other transaction with an interested Director, governed by the GCL, (ii) the indemnification of any present or former agent of the Corporation within the meaning of Section 317 of the GCL, (iii) any reorganization within the meaning of the GCL, or (iv) a plan of distribution in dissolution.

3.10.2 Election of Directors by Written Consent. A Director may be elected at any time to fill a vacancy (other than a vacancy resulting from the removal of a Director) not filled by the Board by the written consent of persons holding a majority of the outstanding Shares Entitled to Vote for the election of Directors, and any required notice of any such election shall promptly be given as provided in Section 3.4.2, above. Directors may not otherwise be elected without a meeting unless a consent in writing, setting forth the action so taken, is signed by all of the persons who would be entitled to vote for the election of Directors.

4. DIRECTORS OF THE CORPORATION

4.1 Powers of Directors. Subject to the limitations of the Certificate of Incorporation, the Bylaws, and the GCL as to action requiring the authorization or approval of the shareholders, the outstanding shares, or less than a majority vote of all shares, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed by, the Board of Directors. The Board may delegate the management of the day-to-day operation of the business to a management company or other person, provided that the business and the affairs of the Corporation shall be managed, and all corporation powers shall be exercised under, the ultimate direction of the Board.

4.2 Number and Qualification of Directors. The authorized number of Directors shall be three (3). A change in the minimum or maximum number of Directors who may be authorized to serve on the Board of Directors, or a change from a variable to a fixed Board may be made only by amendment of the Certificate of Incorporation.

4.3 Election of Directors; Term. The Directors shall be elected at each annual meeting of the shareholders to hold office until the next annual meeting. At any election of Directors, the Directors receiving the highest number of votes, up to the total number of Directors to be elected, shall be elected subject to the provisions of the Certificate of Incorporation. Each Director, including a Director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified. No reduction in the authorized number of Directors shall have the effect of removing any Director prior to the expiration of that Director's term of office.

4.4 Resignation of Directors. Any Director may resign by giving written notice of resignation to the Chairman of the Board, if any, or to the President, the Secretary or the Board of Directors. If any Director tenders a resignation in the manner provided by the GCL, the shareholders or the Board of Directors shall have the power to elect a successor to take office at such time as the resignation shall become effective subject to the provisions of the Certificate of Incorporation.

4.5 Removal of Directors. The entire Board of Directors, or any individual Director, may be removed from office in the manner provided by the GCL.

4.6 Vacancies on Board of Directors. A vacancy in the Board of Directors shall be deemed to exist in the case of the death, resignation or removal of any Director, if a Director has been declared of unsound mind by order of Court or convicted of a felony, if the authorized number of Directors is increased, or if the shareholders shall fail, either at a meeting at which an increase in the number of Directors is authorized or at an adjournment thereof, or at any other time, to elect the full number of authorized Directors. Vacancies on the Board of Directors shall be filled as follows:

4.6.1 If Director not Removed. Any vacancy, other than a vacancy created by the removal of a Director, may be filled by a majority of the remaining Directors, whether or not less than a quorum, or by a sole remaining Director, and each Director so elected shall hold office until the next annual meeting of the shareholders and until a successor has been elected and qualified.

4.6.2 If Director Removed. A vacancy created by the removal of a Director may be filled only by a vote of the majority of the Shares Entitled to Vote at a duly held meeting of the shareholders, or by the unanimous written consent of the holders of the outstanding Shares Entitled to Vote.

4.6.3 Action by Shareholders. The shareholders may at any time elect Directors to fill any other vacancies not filled by the Directors, and any such election made by written consent shall require the consent of a majority of the outstanding Shares Entitled to Vote.

4.7 Meetings of the Board of Directors. Meetings of the Board of Directors shall be held at the principal executive office of the Corporation, or at such other place as may be designated from time to time by resolution of the Board of Directors.

4.7.1 Annual Meetings. An annual meeting of the Board of Directors shall be held without notice at the place of the annual meeting of shareholders immediately following the adjournment of the annual shareholders meeting for the purpose of organizing the Board, electing any officers desired to be elected, and transacting such other business as may properly come before the meeting.

4.7.2 Other Regular Meetings. Other regular meetings of the Board of Directors shall be held without notice at such time as may be designated from time to time by resolution of the Board of Directors.

4.7.3 Special Meetings. Special meetings of the Board of Directors may be called for any purpose at any time by the Chairman of the Board, the President, any Vice-President, the Secretary, or by any two (2) Directors.

A. Notice of the time and place of special meetings shall be delivered or communicated personally to each Director by telephone, or by telegraph or mail, charges prepaid, addressed to each Director at the address of that Director as it is shown upon the records of the Corporation, or if such address is not readily ascertainable, at the place in which the meetings of the Directors are regularly held.

B. Notice by mail shall be deposited in the United States mail at least four (4) days prior to the scheduled time of the meeting, and notice by telegraph shall be delivered to the telegraph company at least forty-eight (48) hours prior to the scheduled time of the meeting. Should notice be delivered personally or by telephone, it shall be so delivered at least forty-eight (48) hours prior to the scheduled time of the meeting.

C. Notice given by mail, telegraph or by delivery in person within the time provided by this Section shall be due, legal and personal notice to the Director to whom it is directed. Any oral notice given within the time provided by this Section shall be due, legal and personal notice if communicated to a person at the office of the Director for whom intended in the reasonable belief that such person will promptly communicate such notice to that Director.

4.7.4 Conference Telephone Meetings. Any meeting, regular or special, may be held by conference telephone or similar communications equipment as long as all Directors participating in the meeting can hear one another, and any such participation shall constitute presence in person at the meeting.

4.7.5 Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as action taken at a meeting regularly called and noticed if all the Directors are present and sign a written waiver of notice and consent to holding such meeting, or if a majority of the Directors are present and all Directors either before or after the meeting, sign a written waiver of notice, or a consent to holding the meeting, or an approval of the minutes thereof. All such waivers, consents, or approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Notice of a meeting need not be given to a Director who attends the meeting without protesting the lack of notice to such Director, either prior thereto or at the commencement of such meeting.

4.7.6 Quorum Requirements. A majority of the exact number of authorized Directors fixed in, or by the Board of Directors pursuant to Section 4.2, shall be necessary to constitute a quorum for the transaction of business (other than to adjourn) and the action of a majority of the Directors present at a meeting duly held at which a quorum is present shall be valid as the act of the Board of Directors unless a greater number is required by the Certificate of Incorporation, these Bylaws, or the GCL. A meeting at which a quorum initially is present may continue to transact business, notwithstanding the withdrawal of one or more Directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

4.7.7 Adjourned Meetings. A majority of the Directors present, whether or not a quorum, may adjourn from time to time by fixing a new time and place prior to taking adjournment, but if any meeting is adjourned for more than twenty-four (24) hours, notice of any adjournment to another time or place shall be given, prior to the reconvening of the adjourned meeting, to any Directors not present at the time the adjournment was taken.

4.8 Director Action Without a Meeting. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all members of the Board shall individually or collectively consent in writing to that action. Each such written consent shall be filed with the minutes of the proceedings of the Board, and shall have the same force and effect as a unanimous vote of the Directors.

4.9 Committees of Directors. The Board of Directors, by resolutions adopted by a majority of the authorized number of Directors, may establish one or more committees, including an Executive Committee, each consisting of two or more Directors, to serve at the pleasure of the Board, and may designate one or more alternate Directors to replace any absent committee members at any meeting of a committee.

4.9.1 Powers of Committees. The Board of Directors may delegate to any such committee any of the powers and authority of the Board of Directors in the business and affairs of the Corporation, except those powers specifically reserved to the Board of Directors by the provisions of the GCL.

4.9.2 Meetings and Actions of Committees. Meetings of committees shall be held and actions of committees shall be taken in the same manner as is provided by these Bylaws for meetings of Directors, except that the time of regular meetings of committees may be determined either by resolution of the Board of Directors or by the members of the committee. Alternate committee members shall be entitled to attend all committee meetings and to receive notice of special meetings of the committee. The Board of Directors may adopt rules for the governing of any committee not inconsistent with the provisions of these Bylaws.

5. OFFICERS OF THE CORPORATION

5.1 Principal Officers. The principal officers of the Corporation shall consist of a President, a Chief Financial Officer, and a Secretary. At the discretion of the Board of Directors, the Corporation may also appoint a Chairman of the Board, one or more Vice-Presidents, and such subordinate officers pursuant to Section 5.3 of these Bylaws as it determines to be appropriate.

5.2 Election; Qualification and Tenure. After their election, the Board of Directors shall meet and organize by electing a President, a Secretary and a Chief Financial Officer, who may be, but need not be, members of the Board of Directors, and such additional officers provided by these Bylaws as the Board of Directors shall determine to be appropriate. Any two or more offices may be held by the same person. Each officer of this Corporation shall serve at the pleasure of the Board of Directors, subject, however, to any rights of an officer under any contract of employment with the Corporation.

5.3 Subordinate Officers. Subordinate officers, including Assistant Secretaries, Treasurers and Assistant Treasurers, and such other officers or agents as the business of the Corporation may require, may from time to time be appointed by the Board of Directors, the President, or by any officer empowered to do so by the Board of Directors, and shall have such authority and shall perform such duties as are provided in the Bylaws or as the Board of Directors or the President may from time to time determine.

5.4 Resignation and Removal of Officers. Subject to the provisions of Section 5.4.3, below:

5.4.1 Removal. Any officer may be removed, either with or without cause, by a majority of the Directors at the time in office, at any regular or special meeting of the Board, or, except in the case of an officer appointed by the Board of Directors, by any officer upon whom the power of removal has been conferred by the Board of Directors.

5.4.2 Resignation. Any officer may resign at any time by giving written notice to the Board of Directors or to the President, or to the Secretary or an Assistant Secretary of the Corporation. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein, and unless otherwise specified in the notice, the acceptance of such resignation shall not be necessary to make it effective.

5.4.3 Contractual Obligations. The resignation or removal of an officer shall not prejudice the rights of the Corporation or of the officer under any contract of employment between the officer and the Corporation.

5.5 Vacancies in Offices. Any vacancy in an office occurring because of death, resignation, removal, disqualification or any other cause may be filled by the Board of Directors at any regular or special meeting of the Board, or in such manner as may otherwise be prescribed in the Bylaws for regular appointment to the vacant office.

5.6 Responsibilities of Officers. The officers of the Corporation shall have the following responsibilities:

5.6.1 Chairman of the Board. The Chairman of the Board, if there be one, shall, when present, preside at all meetings of the shareholders and of the Board of Directors, and shall have such other powers and duties as from time to time shall be prescribed by the Board of Directors. If there is no President, the Chairman of the Board, if any, shall be the Chief Executive Officer and general manager of the Corporation and shall have the powers and duties prescribed in Section 5.6.2, below.

5.6.2 President. The President shall work with the Chief Executive Officer on strategic and operational business issues. In the absence of the Chairman of the Board, or if there be none, the President shall preside at all meetings of the shareholders and of the Board of Directors, but shall have no vote at any such meetings unless the President is also a Director.

5.6.3 Vice-Presidents. In the absence or the disability of the President, and the Chairman of the Board, if any, the Vice-Presidents, in order of their rank as fixed by the Board of Directors, or if not ranked, the Vice-President designated by the President, shall perform the duties and exercise the powers of the President and when so acting shall have all of the powers of and shall be subject to all of the restrictions upon the President. The Vice-Presidents shall perform such other duties and have such other powers as the Board of Directors and the President shall prescribe.

5.6.4 Secretary. The Secretary shall have such powers and shall perform such duties as may be prescribed by the Board of Directors and the President and shall, in addition:

A. Keep, or cause to be kept, at the principal executive office or such other place as the Board of Directors may order, a book of all minutes of all of the proceedings of its shareholders and the Board of Directors and committees of the Board, with the time and place of holding of meetings, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at Directors' meetings, the number of shares present or represented at shareholders' meetings, and the proceedings thereof;

B. Keep, or cause to be kept, at the principal executive office or at the office of the Corporation's transfer agent, a share register or a duplicate share register, showing classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation;

C. Give, or cause to be given, notice of all the meetings of the shareholders and of the Board of Directors required by the Bylaws or by law to be given; and

D. Keep the seal of the Corporation if one be adopted, and affix the seal to all documents requiring a seal.

5.6.5 Assistant Secretary. The Assistant Secretary, if provided for and appointed, shall have all the rights, duties, powers and privileges of the Secretary and may act in the place and stead of the Secretary whenever necessary or desirable.

5.6.6 Chief Financial Officer. The Chief Financial Officer shall have such powers and perform such duties as may be prescribed by the Board of Directors and the President and shall, in addition:

A. Keep and maintain or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, surplus and shares;

B. Deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board of Directors; and

C. Disburse the funds of the Corporation as may be ordered by the Board of Directors, and render to the President and the Directors, whenever they so request, an account of all transactions as Chief Financial Officer and of the financial condition of the Corporation.

6. COMPENSATION; INDEMNIFICATION

6.1 Directors' Fees and Expenses. Directors and committee members may receive compensation for their services in that capacity, and may be reimbursed for expenses incurred by them on behalf of the Corporation, in the manner and only to the extent authorized in resolutions duly adopted by the Board of Directors. Nothing in this Section 6.1 shall preclude a Director from receiving compensation for services in the capacity of an officer, employee or agent of the Corporation. The compensation of the officers of the Corporation shall be fixed from time to time by the Board of Directors or by the President, subject to any rights of the officer pursuant to any employment contract between that officer and the Corporation.

6.2 Indemnification. To the fullest extent to which this corporation is empowered by the General Corporation Law of the State of Delaware, or any other applicable laws, as in effect from time to time, the corporation shall indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or other proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust, or other enterprise, against all expenses (including attorneys' fees and out-of-pocket expenses), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding. Any director, officer or employee of the corporation who is or was serving as a director or officer of a subsidiary corporation or of any entity in which the corporation holds an equity interest shall be deemed to serve in such capacity at the requires of the corporation.

6.2.1 Expenses. Unless otherwise determined by the board of directors in any specific case, expenses incurred by any person described in the first sentence of this Section 6.2, above, in defending a civil or criminal action, suit, or proceeding described in such sentence shall be paid by the corporation in advance of the final disposition of such action, suit, or proceeding unless otherwise determined by the board of directors in the specific case upon receipt of an undertaking by or on behalf of the director or officer to repay such amount in the event that it ultimately is determined that such person is not entitled to be indemnified by this corporation as authorized in this Section 6.2.

6.2.2 Contract Rights. The provisions of this Section 6.2 shall be deemed to be a contract right between the corporation and each director or officer who serves in any such capacity at any time while this Section 6.2 and the relevant provisions of the General Corporation Law of the State of Delaware or other applicable laws are in effect, and any repeal or modification of this Section 6.2 or any such law shall not affect any rights or obligations then existing with respect to any state of facts then or theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts.

6.2.3 Employees and Agents. Persons who are not covered by the foregoing provisions of this Section 6.2 and who are or were employees or agents of the corporation, or who are or were serving at the request of the corporation as employees or agents of another corporation, partnership, joint venture, trust, or other enterprise may be indemnified to the extent authorized at any time or from time to time by the board of directors.

6.2.4 Provisions Not Exclusive. The indemnification provided in this Section 6.2 shall not be deemed to be exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to actions in a person's official capacity and as to actions in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such person.

6.2.5 Insurance. The Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Corporation or is or was serving at the request of the corporation as a director, officer, employee or other agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this Section 6.2.

6.2.6 Merger or Consolidation. For purposes of this Section 6.2, references to "the Corporation" shall include, in addition to the resulting corporation or surviving corporation of any merger or consolidation with the Corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger with the Corporation which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees and agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, or other enterprise, shall stand in the same position under the provisions of this Section 6.2 with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

6.3 Forum Selection and Enforceability.

6.3.1 Delaware Forum. Unless the Corporation consents in writing to the selection of an alternative forum (which consent may be given at any time, including during the pendency of litigation), the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another state court located within the State of Delaware or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware) shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, stockholder, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, the Certificate of Incorporation or the Bylaws (in each case, as may be amended from time to time), (iv) any action asserting a claim governed by the internal affairs doctrine of the State of Delaware, or (v) any other action asserting an "internal corporate claim," as defined in Section 115 of the Delaware General Corporation Law, in all cases subject to the court having personal jurisdiction over all indispensable parties named as defendants.

6.3.2 Federal Forum. Unless the Corporation consents in writing to the selection of an alternative forum (which consent may be given at any time, including during the pendency of litigation), the federal district courts of the United States of America shall be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933.

6.3.3 Personal Jurisdiction. If any action the subject matter of which is within the scope of Section 6.3.1 is filed in a court other than a court located within the State of Delaware (a "Foreign Action") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce Section 6.3.1 (an "Enforcement Action") and (ii) having service of process made upon such stockholder in any such Enforcement Action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder.

6.3.4 Enforceability. If any provision of this Section 6.3 shall be held to be invalid, illegal or unenforceable as applied to any person, entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of this Section 6.3, and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

7. CORPORATE RECORDS AND REPORTS

7.1 Corporate Records. The Corporation shall keep and maintain all of the books and records required by this Section 7.1.

7.1.1 Record of Shareholders. A record of shareholders of the Corporation, giving the names and addresses of all shareholders and the number and class of shares held by each of them, shall be kept at the Corporation's principal executive office, or at the office of its transfer agent or registrar if one be appointed. The records of the Corporation's shareholders shall be open to the shareholders for inspection in the manner and to the extent provided by the GCL.

7.1.2 Corporate Bylaws. The original or a copy of these Bylaws, as amended to date, shall be kept at the principal executive office of the Corporation or, if such office is not in the State of Delaware, at its principal business office in Delaware, and shall be open to inspection by the shareholders at any reasonable time during regular business hours. If the Corporation has no principal executive or business office in Delaware, the Secretary shall furnish a copy of the Bylaws, as amended to date, to any shareholder who makes a written request to inspect the Bylaws.

7.1.3 Minutes and Accounting Records. Accounting books and records of the business and properties of the Corporation, and minutes of the proceedings of its shareholders, the Board of Directors and its committees shall be kept at the principal executive office of the Corporation or at such other location as may be fixed by the Board of Directors from time to time. All such minutes, accounting books and records shall be open to inspection upon the written request of a shareholder at any reasonable time during regular business hours for a purpose reasonably related to the interests of the requesting shareholder in accordance with the provisions of Section 220 of the GCL.

7.2 Inspection of Books and Records. Every Director shall have the absolute right to inspect all books, records and documents of the Corporation and each of its subsidiaries, and to inspect their respective properties, in the manner provided by the GCL. Shareholders and Directors may exercise their right of inspection either in person or by an agent or attorney acting on their behalf. The right to inspect any records or books of the Corporation shall include also the right to copy and to make extracts of such books and records.

7.3 Annual Report to Shareholders. So long as the Corporation has less than one hundred (100) holders of record of its shares (determined as provided in the GCL), no annual report to shareholders shall be required, and the requirement of such a report contained in the GCL is hereby expressly waived. Should the Corporation have more than one hundred (100) shareholders of record (determined as provided in the GCL), the Board of Directors of the Corporation shall cause an annual report to be prepared and delivered to shareholders in accordance with the provisions of the GCL, within the time frame required by that Section. If no annual report for a previous fiscal year was sent to shareholders, the Corporation shall, upon the written request of any shareholder made more than one hundred and twenty (120) days after the close of that fiscal year, deliver or mail to the person making the request within thirty (30) days thereafter the financial statements required by the GCL.

7.4 Financial Statements. Upon the written request of any one or more shareholders holding at least five percent (5%) of the outstanding shares of any class of its stock, the Corporation shall furnish an income statement for the Corporation's most recent fiscal year ended more than one hundred and twenty (120) days prior to the date of the request, and for the most recent interim quarterly or semiannual period ended more than thirty (30) days prior to the date of the request. The Chief Financial Officer shall cause the requested income statements to be prepared, if not previously prepared, and delivered to any requesting shareholder entitled to do so within thirty (30) days after receipt of any such request.

7.4.1 Contents of Financial Statement. If an annual report for the last fiscal year has not been sent to shareholders, the income statement prepared by the Corporation at the request of shareholders entitled to do so shall be accompanied by a balance sheet as of the end of that period and a statement of changes in financial position for the fiscal year.

7.4.2 Audit Report. The quarterly income statements and balance sheets required by this Section 7.4 shall be accompanied by the report, if any, of any independent accountants engaged by the Corporation or by a certificate of an authorized officer of the Corporation that the income statements and balance sheets were prepared without audit from the books and records of the Corporation.

7.5 Non-Disclosure Agreement. The Corporation may require as a condition to the delivery of any information under this Section 7 or to a shareholder's inspection of any books or records of the Corporation pursuant to the provisions of this Section 7 that the shareholder and any other person permitted to participate in such inspection execute an appropriate Confidentiality and Non-Disclosure Agreement and, as appropriate, that the shareholder agree to return all records and information provided by the Corporation after a reasonable period.

8. CERTIFICATES AND TRANSFER OF SHARES

8.1 Certificates for Shares. Subject to the provisions of Section 8.1.1, below, certificates for shares shall be in such form as the Board of Directors may prescribe.

8.1.1 Form of Certificate. Certificates for shares shall certify the number of shares and the classes or series of shares owned by the shareholder, and shall contain a statement setting forth the office or agency of the Corporation from which the shareholder may obtain, upon request and without charge, a copy of the statement of any rights, preferences, privileges, and restrictions granted to or imposed upon each class or series of shares authorized to be issued and upon the holders thereof, and any other legend or statement as may be required by the GCL and the Federal, Delaware, and California corporate securities laws. Notwithstanding the foregoing provisions of this Section 8.1.1, the Board of Directors may adopt a system of issuance, recordation and transfer of the Corporation's shares by electronic or other means not involving any issuance of certificates, provided such system complies with the GCL.

8.1.2 Officer Signatures. Every certificate for shares shall be signed in the name of the Corporation by the Chairman of the Board or by the President or Vice-President and the Chief Financial Officer or Assistant Chief Financial Officer or the Secretary or an Assistant Secretary. Any or all of the signatures on the certificate may be by facsimile.

8.2 Transfer of Shares on Books. Upon surrender to the Secretary or an Assistant Secretary or to the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

8.3 Lost or Destroyed Certificates. A new certificate may be issued without the surrender and cancellation of a prior certificate that is lost, apparently destroyed or wrongfully taken when: (a) the request for the issuance of a new certificate is made within a reasonable time after the owner of the prior certificate has notice of its loss, destruction or theft; and (b) such request is received by the Corporation prior to its receipt of notice that the prior certificate has been acquired by a bona fide purchaser; and (c) the owner of the prior certificate gives an indemnity bond or other adequate security sufficient in the judgment of the Board of Directors to indemnify the Corporation against any claim, expense or liability resulting from the issuance of a new certificate. Upon the issuance of a new certificate, the rights and liabilities of the Corporation, and of the holders of the old and new certificates, shall be governed by the provisions of the Delaware Commercial Code.

8.4 Transfer Agent and Registrars. The Board of Directors may appoint one or more transfer agents or transfer clerks, and one or more registrars, which shall be banks or trust companies, either domestic or foreign, at such times and places as the Board of Directors determines to be appropriate.

9. GENERAL CORPORATE MATTERS

9.1 Corporate Seal. The Board of Directors may, in its discretion, adopt a corporate seal, circular in form and having inscribed thereon the name of the Corporation and the date and state of its incorporation.

9.2 Record Date. The Board of Directors may fix, in advance, a record date for the purpose of determining shareholders entitled to notice of and to vote at any meeting of shareholders, to consent to corporate action in writing without a meeting, to receive any report, to receive any dividend or other distribution or allotment of any right, to exercise rights with respect to any change, conversion or exchange of shares, or to exercise any rights with respect to any other lawful action. The record date so fixed shall not be more than sixty (60) days prior to any event for the purpose for which it is fixed, and shall not be less than ten (10) days prior to the date of any meeting of the shareholders. If no such record date is fixed by the Board of Directors, then the record date shall be that date prescribed by the GCL.

9.3 Voting of Shares in Other Corporations. Shares standing in the name of this Corporation may be voted or represented and all rights incident thereto may be exercised on behalf of the Corporation by the President or, if he is unable or refuses to act, by a Vice-President or by such other person as the Board of Directors may designate.

9.4 Definitions and Interpretation. Unless the context requires otherwise, these Bylaws and the words and phrases included in them shall be construed and interpreted in accordance with the general provisions, rules of construction and definitions in the GCL. Unless expressly provided otherwise, every reference in these Bylaws to the provisions of the GCL shall refer to such provisions as they exist from time to time, or to any successor provision thereto.

10. AMENDMENT TO BYLAWS

10.1 Amendments By Shareholders. These Bylaws may be repealed or amended, or new Bylaws may be adopted, by the affirmative vote of a majority of the outstanding Shares Entitled to Vote or by the written consent of shareholders entitled to vote such shares, subject, however, to the restrictions on such amendments imposed by the GCL, the Certificate of Incorporation, or other provisions of these Bylaws.

10.2 Amendment By Directors. Subject to the right of shareholders as provided in Section 10.1 to adopt, amend or repeal Bylaws, and subject to the rights granted shareholders under the Certificate of Incorporation, the Board of Directors may adopt, amend or repeal Bylaws; provided, however, that no Bylaw or amendment changing the number of Directors of the Corporation, or changing the number of authorized Directors from a fixed to a variable number or vice versa, shall be adopted other than in the manner provided by Section 4.2 of these Bylaws.

10.3 Record of Amendments. Any amendment or new Bylaw adopted by the shareholders or the Board of Directors shall be copied in the appropriate place in the minute book with the original Bylaws, and the repeal of any Bylaw shall be entered on the original Bylaws together with the date and manner of such repeal. The original or a copy of the Bylaws as amended to date shall be open to inspection by the shareholders at the Corporation's principal office in California at all reasonable times during office hours.

SUNWORKS, INC.
RESTRICTED SHARE UNIT AGREEMENT

This Restricted Share Unit Agreement (the “**Agreement**”) is made and entered into as of the Grant Date, by and between Sunworks, Inc., a Delaware corporation (the “**Company**”), and the person named below (the “**Grantee**”), pursuant to the terms and conditions of the Sunworks, Inc. 2016 Equity Incentive Plan (the “**Plan**”). Unless otherwise defined herein, the terms defined in the Plan shall have the same meanings in this Agreement.

Grantee:

Social Security Number:

Address:

Number of Restricted Share Units:

Grant Date:

1. Grant of Restricted Share Units. In consideration for the performance of services by Grantee as a director, employee or consultant (“**Services**”), the Company hereby grants an award of restricted share units, or RSUs (the “**Award**”), to Grantee, subject to the conditions of this Agreement and the Plan. Each RSU represents the right to receive one Share, subject to the terms of this Agreement and the Plan. As used in this Agreement, the term “**Share**” or “**Shares**” shall mean shares of the Company’s common stock, par value \$0.001 per share, which includes the Shares underlying the Award granted under this Agreement, and all securities received (i) in replacement of the Shares, (ii) as a result of stock dividends or stock splits with respect to the Shares and (iii) in replacement of the Shares in a merger, recapitalization, reorganization or similar corporate transaction. For the avoidance of doubt, no Shares shall be issued to Grantee until such Shares have vested pursuant to Section 2 below.

2. Vesting. The Award shall vest as follows: _____, provided that Grantee continues to perform Services for the Company through the applicable vesting date.

2.1 Termination. If Grantee’s Services with the Company terminate for any reason before the vesting date, then the unvested RSUs shall, as of the date of such termination, be forfeited immediately and all rights Grantee has to such RSUs shall immediately terminate.

2.2 Change in Control. In the event of a Change in Control, this Award may be assumed or replaced by the successor or acquiring entity, with appropriate adjustments as to the number and kind of shares issuable hereunder as the parties to the Change in Control shall agree. In the alternative, the successor or acquiring entity may substitute equivalent awards or issue, in place of RSUs, substantially similar equity incentives subject to vesting no less favorable to Grantee. In the event such successor or acquiring entity refuses to assume, replace or substitute this Award, as provided above, pursuant to a Change in Control, then notwithstanding any other provision in the Plan or this Agreement to the contrary, all RSUs subject to this Award shall become fully vested immediately prior to, and conditioned upon, consummation of the Change in Control. In the event this Award is assumed, replaced or substituted, and, upon or within one year following a Change in Control, the Company or the succeeding or acquiring entity terminates Grantee’s Service for any reason other than for Cause, then the RSUs subject to this Award shall become fully vested.

3. Settlement of Award. Subject to Section 5, as soon as practicable (but not later than 30 days) after the vesting of the Award, in whole or part, the Company shall issue or transfer to Grantee (or such other person as is acceptable to the Company and designated in the writing by Grantee) the number of Shares underlying the vested portion of the Award. The Company may effect such issuance or transfer either by the delivery of one or more stock certificates to Grantee or by making an appropriate entry on the books of the Company or the transfer agent of the Company. Except as otherwise provided in the Section 5.1, the Company shall pay all original issue or transfer taxes and all fees and expenses incident to such delivery or issuance. Prior to the issuance or transfer to Grantee of the Shares, Grantee shall have no direct or secured claim in any specific assets of the Company or in such Shares.

4. No Rights as an Employee, Director or Consultant. Nothing in this Agreement shall affect in any manner whatsoever the right or power of the Company, or a parent or Subsidiary of the Company, to terminate Grantee's Service, for any reason, with or without Cause.

5. Withholding Taxes and Adjustments.

5.1. **Withholding Taxes.** As a condition precedent to the issuance or transfer of any Shares upon the vesting of the Award, Grantee shall, upon request by the Company, pay to the Company such amount as the Company may be required under all applicable federal, state, local or other laws or regulations to withhold and pay over as income or other withholding taxes ("**Tax Payments**") with respect to the issuance or transfer of such Shares. If Grantee shall fail to advance the Tax Payments after request by the Company, the Company may, in its discretion, deduct any Tax Payments from any amount then or thereafter payable by the Company to Grantee.

5.2. **Satisfaction of Tax Payments.** Grantee may elect to satisfy his or her obligation to advance the Tax Payments by any of the following means: (1) a check or cash payment to the Company, (2) delivery to the Company previously owned shares having an aggregate Fair Market Value, determined as of the date on which such withholding obligation arises, (3) authorizing the Company to withhold whole Shares which would otherwise be issued or transferred to Grantee having an aggregate Fair Market Value, determined as of the date on which such withholding obligation arises, or (4) such other means as the Administrator may approve. No certificate representing a Share shall be delivered until the Tax Payments have been satisfied in full.

6. Adjustment. In the event of an equity restructuring, such as a stock dividend, stock split, spinoff or recapitalization, as contemplated in Section 7.1 of the Plan, the number and class of securities subject to this Award shall be equitably adjusted by the Administrator in accordance with Section 7.1 of the Plan.

7. Compliance with Laws and Regulations. The issuance of Shares will be subject to and conditioned upon compliance by the Company and Grantee with all applicable state, federal and foreign laws and regulations and with all applicable requirements of any stock exchange or automated quotation system on which the Shares may be listed or quoted at the time of such issuance or transfer. The Shares issued pursuant to this Agreement shall be endorsed with appropriate legends, if any, determined by the Company.

8. Acknowledgement. The Company and Grantee agree that the RSUs are granted under and governed by the this Agreement and the provisions of the Plan (incorporated herein by reference). Grantee (a) acknowledges receipt of a copy of the Plan and the Plan prospectus, (b) represents that he or she has carefully read and are familiar with their provisions, and (c) hereby accept the RSUs subject to all of the terms and conditions set forth herein and those set forth in the Plan. Grantee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions relating to the Plan and this Agreement.

9. Entire Agreement; Enforcement of Rights. This Agreement and the Plan constitute the entire agreement and understanding of the parties relating to the subject matter herein and supersede all prior discussions between them. Any prior agreements, commitments or negotiations concerning the purchase of the Shares hereunder are superseded. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing and signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party.

10. Rights as a Stockholder. Subject to the terms and conditions of this Agreement, and the Plan, Grantee shall have all of the rights of a stockholder of the Company with respect to the Shares only after the Shares are issued under this Agreement.

11. No Transfer. RSUs may not be sold, assigned, transferred, pledged, hypothecated, or otherwise disposed of in any manner other than by will or by the laws of descent or distribution or court order or unless otherwise permitted by the Administrator on a case-by-case basis

12. Tax Consequences. GRANTEE UNDERSTANDS THAT GRANTEE MAY SUFFER ADVERSE TAX CONSEQUENCES AS A RESULT OF GRANTEE'S ACQUISITION OR DISPOSITION OF THE SHARES. GRANTEE REPRESENTS (i) THAT GRANTEE HAS CONSULTED WITH A TAX ADVISER THAT GRANTEE DEEMS ADVISABLE IN CONNECTION WITH THE ACQUISITION OR DISPOSITION OF THE SHARES AND (ii) THAT GRANTEE IS NOT RELYING ON THE COMPANY FOR ANY TAX ADVICE.

13. Successors and Assigns. The Company may assign any of its rights under this Agreement. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, this Agreement shall be binding upon Grantee and Grantee's heirs, executors, administrators, legal representatives, successors and assigns.

14. Governing Law; Severability. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware as such laws are applied to agreements between Delaware residents entered into and to be performed entirely within Delaware, excluding that body of laws pertaining to conflict of laws. If any provision of this Agreement is determined by a court of law to be illegal or unenforceable, then such provision shall be enforced to the maximum extent possible and the other provisions shall remain fully effective and enforceable.

15. Notices. Any notice required to be given or delivered to the Company shall be in writing and addressed to the Corporate Secretary of the Company at its principal corporate offices. Any notice required to be given or delivered to Grantee shall be in writing and addressed to Grantee at the address indicated above or to such other address as Grantee may designate in writing from time to time to the Company. All notices shall be deemed effectively given upon personal delivery, (i) three (3) days after deposit in the United States mail by certified or registered mail (return receipt requested), (ii) one (1) business day after its deposit with any return receipt express courier (prepaid), or (iii) one (1) business day after transmission by facsimile or email.

16. Further Instruments. The parties agree to execute such further instruments and to take such further action as may be reasonably necessary to carry out the purposes and intent of this Agreement.

17. Headings; Counterparts. The captions and headings of this Agreement are included for ease of reference only and shall be disregarded in interpreting or construing this Agreement. All references herein to Sections shall refer to Sections of this Agreement. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all of which together shall constitute one and the same agreement.

18. Discretionary Nature of Plan. The Plan is discretionary and may be amended, cancelled or terminated by the Company at any time, in its discretion. The grant of this Award does not create any contractual right or other right to receive any other awards in the future. Future awards, if any, will be at the sole discretion of the Company. Any amendment, modification, or termination of the Plan shall not constitute a change or impairment of the terms and conditions of Grantee's employment with the Company.

19. Code Section 409A. For purposes of this Agreement, a termination of employment will be determined consistent with the rules relating to a "separation from service" as defined in Section 409A of the Internal Revenue Code and the regulations thereunder ("**Section 409A**"). Notwithstanding anything else provided herein, to the extent any payments provided under this Agreement in connection with Grantee's termination of employment constitute deferred compensation subject to Section 409A, and Grantee is deemed at the time of such termination of employment to be a "specified employee" under Section 409A, then such payment shall not be made or commence until the earlier of (a) the expiration of the six-month period measured from Grantee's separation from service or (b) the date of Grantee's death following such a separation from service; provided, however, that such deferral shall only be effected to the extent required to avoid adverse tax treatment to Grantee including, without limitation, the additional tax for which Grantee would otherwise be liable under Section 409A(a)(1)(B) in the absence of such a deferral. To the extent any payment under this Agreement may be classified as a "short-term deferral" within the meaning of Section 409A, such payment shall be deemed a short-term deferral, even if it may also qualify for an exemption from Section 409A under another provision of Section 409A. Payments pursuant to this Section are intended to constitute separate payments for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

20. Award Subject to Company Clawback or Recoupment. To the extent permitted by applicable law, the RSUs shall be subject to clawback or recoupment pursuant to any compensation clawback or recoupment policy adopted by the Board or required by law during the term of Grantee's employment or other Service that is applicable to Grantee. In addition to any other remedies available under such policy, applicable law may require the cancellation of Grantee's RSUs (whether vested or unvested) and the recoupment of any gains realized with respect to Grantee's RSUs.

[SIGNATURE PAGE FOLLOWS]

IN WHEREOF, the Company has caused this Agreement to be executed by its duly authorized representative and Grantee has executed this Agreement as of the Grant Date.

SUNWORKS, INC.

GRANTEE:

By: _____
Gaylon Morris, President

Name:

SUNWORKS, INC.
2016 EQUITY INCENTIVE PLAN

[NONQUALIFIED/INCENTIVE] STOCK OPTION AGREEMENT

This [NONQUALIFIED/INCENTIVE] STOCK OPTION AGREEMENT (the "Option Agreement"), dated as of _____ and effective as of _____ (the "Grant Date"), is by and between Sunworks, Inc., a Delaware corporation (the "Company"), and _____ (the "Optionee"), a key employee of the Company or of a subsidiary of the Company (a "Related Corporation"), pursuant to the Sunworks, Inc. 2016 Equity Incentive Plan (the "Plan").

WHEREAS, the Company desires to give the Optionee the opportunity to purchase shares of common stock of the Company, par value \$0.001 per share ("Common Stock"), in accordance with the provisions of the Plan, a copy of which is attached hereto;

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth and for other good and valuable consideration, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Grant of Option. The Company hereby grants to the Optionee the right and option (the "Option") to purchase all or any part of an aggregate of _____ (_____) shares of Common Stock. The Option is in all respects limited and conditioned as hereinafter provided, and is subject in all respects to the terms and conditions of the Plan now in effect and as it may be amended from time to time (but only to the extent that such amendments apply to outstanding options). Such terms and conditions are incorporated herein by reference, made a part hereof, and shall control in the event of any conflict with any other terms of this Option Agreement. The Option granted hereunder is intended to be [a nonqualified/an incentive] stock option ("[NQSO/ISO]") meeting the requirements of the Plan [/and section 422 of the Internal Revenue Code of 1986, as amended (the "Code"), and not a nonqualified stock option].

2. Exercise Price. The exercise price of the shares of Common Stock covered by this Option shall be \$ _____ per share. It is the determination of the committee administering the Plan (the "Committee") that on the Grant Date the exercise price was not less than the greater of (i) 100% (110% for an Optionee who owns more than 10% of the total combined voting power of all shares of stock of the Company or of a Related Corporation a "More-Than-10% Owner") of the "Fair Market Value" (as defined in the Plan) of a share of Common Stock, or (ii) the par value of a share of Common Stock.

3. Term. Unless earlier terminated pursuant to any provision of the Plan or of this Option Agreement, this Option shall expire on _____ (the "Expiration Date"), which date is not more than 10 years (five years in the case of a "More-Than-10% Owner") from the Grant Date. This Option shall not be exercisable on or after the Expiration Date.

4. Exercise of Option. [The Option shall vest over a _____ period in _____ increments commencing on the Grant Date, provided that Optionee remains continuously engaged as a director, officer or employee of, or consultant or advisor to, the Company or a Related Corporation from the date hereof through the applicable vesting date].

The Committee may accelerate any vesting date of the Option, in its discretion, if it deems such acceleration to be desirable. Once the Option becomes exercisable, it will remain exercisable until it is exercised or until it terminates.

5. Method of Exercising Option. Subject to the terms and conditions of this Option Agreement and the Plan, the Option may be exercised by written notice to the Company at its principal office. The form of such notice is attached hereto and shall state the election to exercise the Option and the number of whole shares with respect to which it is being exercised; shall be signed by the person or persons so exercising the Option; and shall be accompanied by payment of the full exercise price of such shares. Only full shares will be issued.

The exercise price shall be paid to the Company:

- (a) in cash, check payable to the order of the Company, or electronic funds transfer;
- (b) by notice and third party payment in such manner as may be authorized by the Committee;
- (c) through the delivery of shares of Common Stock previously acquired by the Optionee;
- (d) by a reduction in the number of shares otherwise deliverable to the Optionee pursuant to the Option;
- (e) subject to such procedures as the Committee may adopt, pursuant to a “cashless exercise” with a third party who provides financing for the purposes of (or who otherwise facilitates) the purchase or exercise of the Option; or
- (f) in any combination of the foregoing.

In the event the exercise price is paid, in whole or in part, with shares of Common Stock, the portion of the exercise price so paid shall be equal to the Fair Market Value of the shares of Common Stock surrendered on the date of exercise.

Upon receipt of notice of exercise and payment, the Company shall deliver a certificate or certificates representing the shares of Common Stock with respect to which the Option is so exercised. The Optionee shall obtain the rights of a shareholder upon receipt of a certificate(s) representing such shares of Common Stock.

Such certificate(s) shall be registered in the name of the person so exercising the Option (or, if the Option is exercised by the Optionee and if the Optionee so requests in the notice exercising the Option, shall be registered in the name of the Optionee and the Optionee’s spouse, jointly, with right of survivorship), and shall be delivered as provided above to, or upon the written order of, the person exercising the Option. In the event the Option is exercised by any person after the death or disability (as determined in accordance with Section 22(e)(3) of the Code) of the Optionee, the notice shall be accompanied by appropriate proof of the right of such person to exercise the Option. All shares of Common Stock that are purchased upon exercise of the Option as provided herein shall be fully paid and non-assessable.

Upon any exercise, vesting or payment of the Option, the Company or a Related Company shall have the right at its option to (i) require the Optionee to pay or provide for the payment of any taxes which the Company or a Related Company may be required to withhold with respect to the award event or payment or (ii) deduct from any amount otherwise payable in cash to the Optionee any taxes which the Company or a Related Company may be required to withhold with respect to such cash payment. In any case where a tax is required to be withheld in connection with the delivery of shares of Common Stock under the Plan, the Committee may in its sole discretion grant (either at the time of the award or thereafter) to the Optionee the right to elect, pursuant to such rules and subject to such conditions as the Committee may establish, to have the Company reduce the number of shares to be delivered by (or otherwise reacquire) the appropriate number of shares, valued in a consistent manner at their Fair Market Value or at the sales price in accordance with authorized procedures for cashless exercises, necessary to satisfy the minimum applicable withholding obligation on exercise, vesting or payment. Nothing in the preceding sentence shall impair or limit the Company’s rights with respect to satisfying withholding obligations under Section 8.5 of the Plan.

6. Non-Transferability of Option. This Option is not assignable or transferable, in whole or in part, by the Optionee other than by will or by the laws of descent and distribution. During the lifetime of the Optionee, the Option shall be exercisable only by the Optionee or, in the event of his or her disability, by his or her guardian or legal representative; *provided, however*, that the Committee may permit the Option to be exercised by and paid to, or otherwise transferred to, other persons or entities pursuant to such conditions and procedures, including limitations on subsequent transfers, as the Committee may, in its sole discretion, establish in writing (provided that any such transfers of [NQSOs/ISOs] shall be limited to the extent permitted under the federal tax laws governing [NQSOs/ISOs]). Any permitted transfer shall be subject to compliance with applicable federal and state securities laws.

7. Change in Control. (a) For purposes of this Option Agreement, unless otherwise defined in an agreement between the Company and the Optionee, a Change in Control shall be deemed to have occurred if:

- (i) a tender offer (or series of related offers) shall be made and consummated for the ownership of 50% or more of the outstanding voting securities of the Company, unless as a result of such tender offer more than 50% of the outstanding voting securities of the surviving or resulting corporation shall be owned in the aggregate by the stockholders of the Company (as of the time immediately prior to the commencement of such offer), any employee benefit plan of the Company or a Related Corporation, and their affiliates;
- (ii) the Company shall be merged or consolidated with another corporation, unless as a result of such merger or consolidation more than 50% of the outstanding voting securities of the surviving or resulting corporation shall be owned in the aggregate by the stockholders of the Company (as of the time immediately prior to such transaction), any employee benefit plan of the Company or a Related Corporation, and their affiliates;
- (iii) the Company shall sell substantially all of its assets to another corporation that is not wholly owned by the Company, unless as a result of such sale more than 50% of such assets shall be owned in the aggregate by the stockholders of the Company (as of the time immediately prior to such transaction), any employee benefit plan of the Company or a Related Corporation and their affiliates; or
- (iv) a Person (as defined in the Plan) shall acquire 50% or more of the outstanding voting securities of the Company (whether directly, indirectly, beneficially or of record), unless as a result of such acquisition more than 50% of the outstanding voting securities of the surviving or resulting corporation shall be owned in the aggregate by the stockholders of the Company (as of the time immediately prior to the first acquisition of such securities by such person), any employee benefit plan of the Company or a Related Corporation, and their affiliates.

(b) If, at any time, the Company shall effect a Change in Control transaction, then, on the date of the occurrence of such Change in Control transaction, the surviving, continuing, successor, or purchasing corporation or parent corporation thereof, as the case may be (the "Acquiring Corporation"), may either assume the Company's rights and obligations under the Option or substitute for the Option a substantially equivalent option for the Acquiring Corporation's stock. In the event the Acquiring Corporation elects not to assume the Company's rights and obligations under the Option or substitute for the Option in connection with the Change in Control, and provided that the Optionee's Service has not terminated prior to such date, the Option shall immediately vest. Any vesting of the Option that was permissible solely by reason of this Section 7(b) shall be conditioned upon the consummation of the Change in Control.

(c) Notwithstanding the foregoing, if Change in Control is defined in an agreement between the Company and the Optionee, then, with respect to such Optionee and the Option, Change in Control shall have the meaning ascribed to it in such agreement.

8. Termination of Employment.

(a) If the Optionee's employment with or service to the Company and all Related Corporations is terminated by the Optionee for any reason other than death or Disability (defined below), the exercise period for the Option shall terminate three (3) months after the last day that the Optionee is employed by or provides services to the Company or a Related Corporation; provided, however, that in the event of the Optionee's death during this period, those persons entitled to exercise the Option pursuant to the laws of descent and distribution shall have one (1) year following the date of death within which to exercise such Option). The transfer of an Optionee from the employ of or service to the Company to the employ of or service to a Related Corporation, or vice versa, or from one Related Corporation to another, shall not be deemed to constitute a termination of employment or service for purposes of the Option Agreement.

(b) In the event that the Optionee's employment or service with the Company and all Related Corporations is terminated by the Company or any Related Corporations for "cause", the exercise period for the Option shall terminate immediately. The Committee will, in its absolute discretion, determine the effect of all matters and questions relating to a termination of employment, including, but not by way of limitation, the question of whether a leave of absence constitutes a termination of employment and whether a participant's termination is for "cause".

For purposes hereof, unless otherwise defined in an employment agreement between the Company and the Optionee, "Cause" shall mean:

- (i) conviction of a felony or a crime involving fraud or moral turpitude;
- (ii) theft, material act of dishonesty or fraud, intentional falsification of any employment or Company records, or commission of any criminal act which impairs participant's ability to perform appropriate employment duties for the Company;
- (iii) intentional or reckless conduct or gross negligence materially harmful to the Company or the successor to the Company after a Change in Control, including violation of a non-competition or confidentiality agreement;
- (iv) willful failure to follow lawful instructions of the person or body to which participant reports; or
- (v) gross negligence or willful misconduct in the performance of participant's assigned duties.

Cause shall not include mere unsatisfactory performance in the achievement of Optionee's job objectives.

9. Disability. If the Optionee's employment with or service to the Company and all Related Corporations terminates by reason of Disability (as defined below), then the exercise period for the Option shall terminate twelve (12) months after the last day that the Optionee is employed by or provides services to the Corporation or a Related Corporation. "Disability" shall mean an Optionee's total and permanent disability; provided, that if Disability is defined in an employment agreement between the Company and the Optionee, Disability shall have the meaning ascribed to it in such employment agreement.

10. Death. If the Optionee's employment with or service to the Company and all Related Corporations terminates by reason of death, the exercise period for the Option shall terminate twelve (12) months after the last day that the participant is employed by or provides services to the Corporation or a Related Corporation.

11. Securities Matters.

(a) If, at any time, counsel to the Company shall determine that the listing, registration or qualification of the shares of Common Stock subject to the Option upon any securities exchange or under any state or federal law, or the consent or approval of any governmental or regulatory body, or that the disclosure of non-public information or the satisfaction of any other condition is necessary as a condition of, or in connection with, the issuance or purchase of shares of Common Stock hereunder, such Option may not be exercised, in whole or in part, unless such listing, registration, qualification, consent or approval, or satisfaction of such condition shall have been effected or obtained on conditions acceptable to the Board of Directors. The Company shall be under no obligation to apply for or to obtain such listing, registration or qualification, or to satisfy such condition. The Committee shall inform the Optionee in writing of any decision to defer or prohibit the exercise of an Option. During the period that the effectiveness of the exercise of an Option has been deferred or prohibited, the Optionee may, by written notice, withdraw the Optionee's decision to exercise and obtain a refund of any amount paid with respect thereto.

(b) The Company may require: (i) the Optionee (or any other person exercising the Option in the case of the Optionee's death or Disability) as a condition of exercising the Option, to give written assurances, in substance and form satisfactory to the Company, to the effect that such person is acquiring the shares of Common Stock subject to the Option for his or her own account for investment and not with any present intention of selling or otherwise distributing the same, and to make such other representations or covenants; and (ii) that any certificates for shares of Common Stock delivered in connection with the exercise of the Option bear such legends, in each case as the Company deems necessary or appropriate, in order to comply with federal and applicable state securities laws, to comply with covenants or representations made by the Company in connection with any public offering of its shares of Common Stock or otherwise. The Optionee specifically understands and agrees that the shares of Common Stock, if and when issued upon exercise of the Option, may be "restricted securities," as that term is defined in Rule 144 under the Securities Act of 1933 and, accordingly, the Optionee may be required to hold the shares indefinitely unless they are registered under such Securities Act of 1933, as amended, or an exemption from such registration is available.

(c) The Optionee shall have no rights as a shareholder with respect to any shares of Common Stock covered by the Option (including, without limitation, any rights to receive dividends or non-cash distributions with respect to such shares) until the date of issue of a stock certificate to the Optionee for such shares of Common Stock. No adjustment shall be made for dividends or other rights for which the record date is prior to the date such stock certificate is issued.

12. Governing Law. This Option Agreement shall be governed by the applicable Code provisions to the maximum extent possible. Otherwise, the laws of the State of Delaware (without reference to the principles of conflict of laws) shall govern the operation of, and the rights of the Optionee under, the Plan and Options granted thereunder.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have duly executed this [Nonqualified/Incentive] Stock Option Agreement as of the .

SUNWORKS, INC.

By:

Title: Chief Executive Officer

OPTIONEE

SUNWORKS, INC.
2016 EQUITY INCENTIVE PLAN

Notice of Exercise of [Nonqualified/Incentive] Stock Option

I hereby exercise the [nonqualified/incentive] stock option granted to me pursuant to the [Nonqualified/Incentive] Stock Option Agreement dated as of _____, 20__, by Sunworks, Inc. (the "Company"), with respect to the following number of shares of the Company's common stock ("Shares"), par value \$0.001 per Share, covered by said option:

Number of Shares to be purchased: _____

Purchase price per Share: \$_____

Total purchase price: \$_____

___ B. Enclosed is cash, check made payable to the Company in the amount of \$_____ in full/partial **[circle one]** payment for such Shares;

and/or

___ C. A notice and third party payment in the in the amount of \$_____ in full/partial **[circle one]** payment for such Shares;

and/or

___ D. Enclosed is/are _____ Share(s) with a total fair market value of \$_____ on the date hereof in full/partial **[circle one]** payment for such Shares;

and/or

___ E. A notice with respect to the reduction in the number of Shares deliverable pursuant to the [Nonqualified/Incentive] Stock Option Agreement dated as of _____, 20__

and/or

___ F. A "cashless exercise" with a third party who provides financing for the purposes of (or who otherwise facilitates) the purchase or exercise of the option which cashless exercise shall be in full/partial **[circle one]** payment for such Shares;

Please have the certificate or certificates representing the purchased Shares registered in the following name or names * : _____; and sent to _____.

DATED: _____, 20__

Optionee's Signature

* Certificates may be registered in the name of the Optionee alone or in the joint names (with right of survivorship) of the Optionee and his or her spouse.

AMENDMENT TO EMPLOYMENT AGREEMENT

This Amendment to Employment Agreement (this "Amendment"), dated as of December 20, 2021 (the "Amendment Effective Date"), is entered into by and between Gaylon Morris, an individual (the "Executive"), and Sunworks, Inc., a Delaware corporation (the "Company").

RECITALS

A. Executive and the Company are parties to an Employment Agreement dated January 11, 2021 (the "Employment Agreement"). Terms used and not defined in this Amendment shall have the meanings defined in the Employment Agreement.

B. Pursuant to the Employment Agreement, the Employment Agreement may be amended in an instrument executed by the Executive and the Company.

C. The Company and Executive desire to amend the Employment Agreement to revise certain aspects of Executive's compensation.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Compensation. The Executive's compensation provisions set forth in Sections 8.1, 8.2 and 8.3 of the Employment Agreement shall be deleted and replaced with the following:

8.1. Annual Compensation. Executive shall be paid a base salary of four hundred thousand dollars (\$400,000.00) payable bi-weekly in 26-equal amounts. Executive's position is a regular, fulltime position classified as "exempt" and thus Executive is not eligible for overtime compensation.

8.2. Bonus: For each fiscal year of Executive's employment hereunder, Executive shall be eligible to receive an annual bonus (the "Annual Bonus"). However, the decision to provide any Annual Bonus and the amount and terms of any Annual Bonus shall be in the sole and absolute discretion of the Compensation Committee of the Company's Board of Directors and shall be subject to the terms of the Company annual bonus plan under which it is granted. In addition, in order to be eligible to receive an Annual Bonus, Executive must be employed by the Company on the last day of the applicable fiscal year that Annual Bonuses are paid. Notwithstanding anything to the contrary herein, for the fiscal year ending December 31, 2022 and all subsequent years in which the Executive is employed by the Company, Executive, shall be paid an Annual Bonus equal to (i) 75% of base salary if the Company's GAAP consolidated operating income for the combined period from January 1 through December 31 of the calendar year exceeds \$0, and (ii) 50% of base salary if the Company's GAAP consolidated operating income for the combined period from January 1 through December 31 of the calendar year is less than \$0, provided that certain additional objectives are met, as set and determined by the Compensation Committee of the Company's Board of Directors.

8.3. **Equity Awards.** In consideration of Executive's continued employment, on the date hereof, the Company will grant to Executive a restricted stock unit grant representing the right to receive up to 284,900 shares of common stock under the Sunworks, Inc. 2016 Equity Incentive Plan (the "Plan"), which shall vest in full on the date that the Administrator (as defined in the Plan) certifies receipt by the Company of an audit report from its independent auditors in which the Company's EBITDA (as defined below) for the combined period from January 1 through December 31 of the calendar year exceeds \$0. All other terms and conditions of such award shall be governed by the terms and conditions of the Plan and the applicable award agreement. "**EBITDA**" means the consolidated earnings of the Company and its subsidiaries before interest, taxes, depreciation and amortization, as calculated using the audited financial statements of the Company.

2. **Effect of Amendment.** The provisions of the Employment Agreement, except as specifically amended by this Amendment, shall remain in full force and effect following the effectiveness of this Amendment.

3. **Governing Law.** The validity, interpretation, construction and performance of this Amendment shall be governed by the laws of the State of California, without regard to its conflict of laws principles.

4. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

[Signature Pages Follow]

The parties have duly executed this Amendment to Employment Agreement as of the date first above written.

EXECUTIVE:

By: /s/ Gaylon Morris
Gaylon Morris

COMPANY:

SUNWORKS, INC., a Delaware corporation

By: /s/ Jason Bonfigt
Name: Jason Bonfigt
Title: Chief Financial Officer

[Signature Page to Amendment to Employment Agreement]

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statement Nos. 333-215938 and 333-257870 on Form S-8 and Registration Statement No. 333-252475 on Form S-3 of our report dated March 11, 2022, relating to the consolidated financial statements of Sunworks, Inc. appearing in this Annual Report on Form 10-K of Sunworks, Inc. for the year ended December 31, 2021.

/s/ KMJ Corbin & Company LLP

Irvine, California
March 11, 2022

CERTIFICATION

I, Gaylon Morris, certify that:

1. I have reviewed this Annual Report on Form 10-K of Sunworks, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the consolidated financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rule 13a-15 (f) and 15 (d)-15(f)) for the registrant and we have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;

b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of consolidated financial statements for external purposes in accordance with generally accepted accounting principles;

c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect the registrant's internal control over the financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting that are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

/s/ Gaylon Morris

Chairman
(Principal Executive Officer)

Date: March 11, 2022

CERTIFICATION

I, Jason Bonfigt, certify that:

1. I have reviewed this Annual Report on Form 10-K of Sunworks, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the consolidated financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rule 13a-15 (f) and 15 (d)-15(f)) for the registrant and we have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;

b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of consolidated financial statements for external purposes in accordance with generally accepted accounting principles;

c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect the registrant's internal control over the financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting that are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

/s/ Jason Bonfigt

Chief Financial Officer
(Principal Financial and Accounting Officer)

Date: March 11, 2022

Certification
Pursuant To Section 906 of the Sarbanes-Oxley Act Of 2002
(Subsections (A) And (B) Of Section 1350, Chapter 63 of Title 18, United States Code)

Pursuant to section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of section 1350, chapter 63 of title 18, United States Code), each of the undersigned officers of Sunworks, Inc., (the "Company"), does hereby certify, to such officer's knowledge, that:

The Annual Report on Form 10-K for the fiscal year ended December 31, 2021 (the "Form 10-K") of the Company fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and the information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Gaylon Morris

Chief Executive Officer
(Principal Executive Officer)

Dated: March 11, 2022

/s/ Jason Bonfigt

Interim Chief Financial Officer
(Principal Financial and Accounting Officer)

Dated: March 11, 2022

The foregoing Certifications are being furnished solely to accompany the Form 10-K pursuant to 18 U.S.C. Section 1350, and are not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and are not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing. A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.
